

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-1163

75-1150

---

**United States Court of Appeals**  
For the Second Circuit

---

UNITED STATES OF AMERICA,

*Appellee,*

*against*

MICHAEL DURST, SUSAN WEINBLATT, STEPHEN EFFRON,  
STANLEY NICASTRO, JOHN PERLMAN, JEFFREY PREISMAN,  
JANE DOE, a/k/a "Sam",

*Defendants,*

and

STUART STEINBERG, HOWARD KAYE, JAMES PARKER,  
WILLIAM CAPO,

*Defendants-Appellants.*

**Appeal from a Judgment of the United States  
District Court for the Southern District of New York**

---

**JOINT APPENDIX OF APPELLANTS  
STEINBERG AND KAYE**

---

STANLEY S. ARKIN, P.C.

*Attorneys for Defendant-Appellant*

*Stuart Steinberg*

300 Madison Avenue

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LITMAN, FRIEDMAN & KAUFMAN

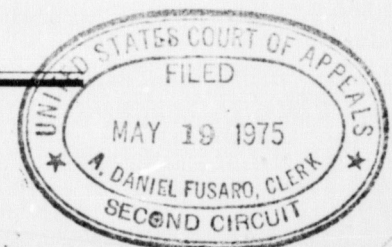
*Attorneys for Defendant-Appellant*

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# Relevant Docket Entries

DATE	PROCEEDINGS
5-28-74	Filed pretrial motions of deft Howard Kaye.
5-28-74	Filed deft Howard Kaye's memo of law in support of pretrial motions.
10-22-74	Filed Order that the Court ordered, applications and related documents previously sealed by my order under the miscellaneous docket number 73 Cr. Misc. 1 M 19 97 (35), be unsealed and docketed as part of the record in this action. Tenney, J.
4- 9-74	Govt.'s inventory (previously filed under Misc. number)
10-22-74	Filed Order that the inventory required by Title 18, U.S. Code, Section 2518 (8) (d) is hereby postponed for 60 days, etc. dtd 11/28/73—Stewart, J. (previously filed under Misc. number)
10-22-74	Filed Order authorizing interception of wire communications, etc. and affdvt. Stewart, J. (previously filed under Misc. number)
10-22-74	Filed Order that the inventory required by T. 18, U.S. Code, Sec 2518 (8)(d) is hereby postponed for an additional 60 days. Dated 1/28/74. Stewart, J. (previously filed under Misc. number)
12- 6-74	Stuart Steinberg—Filed deft's. affidavit & notice of motion to suppress the contents of all intercepted communications & evidence derived therefrom, retd. 12-17-74.

*Relevant Docket Entries*

DATE	PROCEEDINGS
12- 6-74	Stuart Steinberg—Filed deft's. memorandum of law in support of motion to suppress.
12-17-74	Stuart Steinberg—Filed Govt's. affidavit in opposition to deft's. motion to suppress wiretap evidence.
12-17-74	Stuart Steinberg—Filed Govt's. memorandum in opposition to deft's. motion to suppress wiretap evidence.
12-17-74	Filed transcript of record of proceedings dated 10-18-74.
12-17-74	Filed transcript of record of proceedings dated 10-22-74.
12-20-74	Howard Kaye—Filed Memo Endorsed on deft's. motion filed 5-28-74. Motion for an order pursuant to 18 U.S.C. Sec. 4244 withdrawn without prejudice. The remaining motions are denied except as consented to by the Government. The particulars and materials are to be furnished to deft's. attorneys by 5:00 P.M. on 12-27-74 except as otherwise agreed to in open court. So Ordered. Ward, J. (mailed notice)
12-30-74	Stuart Steinberg—Filed Memo Endorsed on deft's. motion filed 12-6-74. Motion denied in accordance with memorandum decision filed herewith. Ward, J. (mailed notice)
12-30-74	Stuart Steinberg—Filed Memorandum Order. Deft. Steinberg's motion, joined by defendants, Perlman, Effron, Kaye & Parker to suppress the contents of all intercepted conversations and evidence derived therefrom is in all respects Denied. So Ordered. Ward, J. (mailed notice)



*Relevant Docket Entries*

DATE	PROCEEDINGS
1-17-75	Stuart Steinberg—Filed def't's. notice of motion to dismiss Counts 1, 7 through 12, and 14 of the indictment ret. 1-20-75.
1-17-75	Stuart Steinberg—Filed def't's. memorandum of law in support of motion to dismiss Counts 1, 7 through 12 and 14 of the indictment.
1-20-75	Stuart Steinberg—Filed def't's. supplemental memorandum of law in support of motion to dismiss.
1-20-75	Stuart Steinberg—Filed Memo Endorsed on def't's. motion to dismiss, ret. 1-20-75. Motion denied in accordance with oral decision rendered on this date. It is so ordered. Ward, J.
1-30-75	Howard Kaye—Filed def't's. request to charge.
1-30-75	Stuart Steinberg—Filed def't's. requests to charge.
1-30-75	Stuart Steinberg—Filed def't's. supplemental requests to charge.
1-30-75	Filed Gov't's. request to charge.
1-30-75	Filed Gov't's. supplemental requests to charge.
1-30-75	Howard Kaye—Filed def't's. memorandum in support of motion for a judgment of acquittal pursuant to Rule 29, F.R.Cr.P.
2-19-75	Filed transcript of record of proceedings dated December 19, 1974.
2-24-75	Filed transcript of record of proceedings dated January 20, 21, 22, 23, 24, 27, 28, 29, 1975.
2-24-75	Filed transcript of record of proceedings dated January 17, 1975.



*Relevant Docket Entries*

DATE	PROCEEDINGS
3-13-75	Filed transcript of record of proceedings dated January 14, 15, 1975.
3-18-75	Howard Kaye—Filed Judgment & Commitment #75,245 (Atty. Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of Two (2) Months on count 1 to be followed by a Special Parole period of Three (3) Years & a fine of \$5,000.00; Two (2) Months on count 7 and a fine of \$5,000.00. Sentence & fine on count 7 to run concurrently with count 1. Total Fine \$5,000.00. The dft. is ordered to stand committed until the fine of \$5,000.00 is paid or he is otherwise discharged by due course of law. The dft. is hereby directed to surrender himself to the Atty. Gen., by reporting to Allenwood Prison Camp, Montgomery, Pennsylvania, on the date which shall be fixed by the Bureau of Prisons. The Dft. shall be given at least five day's notice of this date. Ward J. Commitment Issued 3-20-75.
3-20-75	Howard Kaye—Filed deft's. notice of appeal from the judgment of conviction entered on 3-18-75. Mailed notice to Howard Kaye, 10 South Ridge Road, Larchmont, New York 10538 and U.S. Attorney's Office.

JA 5  
INDICTMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

STUART STEINBERG, :  
JOHN PERLMAN, :  
JEROME FRIEDMAN, :  
WILLIAM CAGO, :  
MICHAEL BURST, :  
SUSAN WEINELATT, :  
STEPHEN EITRON, :  
HOWARD KAYE, :  
STANLEY NICASTRO, :  
JAMES PARKER and :  
JANE DOE, a/k/a "Sam", :

Defendants. :

INDIGENT

73 cc. 1095  
filed 12/5/73  
unsealed 2/28/74

The Grand Jury charges:

1. From on or about the 1st day of June, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, STUART STEINBERG, JOHN PERLMAN, JEROME FRIEDMAN, WILLIAM CAGO, MICHAEL BURST, SUSAN WEINELATT, STEPHEN EITRON, HOWARD KAYE, STANLEY NICASTRO, JAMES PARKER and JANE DOE, a/k/a "Sam", the defendants and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1), <sup>and</sup> 841(b)(1)(B)

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic



JA 6  
INDICTMENT

drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule III controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about June 27, 1973, defendant WILLIAM CHAO delivered a package containing phencyclidine to defendant STUART STEINBERG, in the vicinity of 135 E. 35th Street, New York, New York.

2. On or about July 10, 1973, defendant STUART STEINBERG delivered a package containing phencyclidine, in the vicinity of 135 East 35th Street, New York, New York.

3. On or about July 10, 1973, defendant MICHAEL BROSSE went to 135 East 35th Street, New York, New York.

JA 7  
INDICTMENT

100,000.00

4. On or about July 17, 1973, defendant STUART STEINBERG discussed the sale of ten pounds of phencyclidine for \$120,000.00.

5. On or about July 23, 1973, defendant JEFFREY FAIRMAN had a telephone conversation.

6. On or about July 26, 1973, defendants HOWARD DAVE and STUART STEINBERG discussed the sale of fifty pounds of either cocaine or phencyclidine for \$680,000.00.

7. On or about July 26, 1973, defendants STANLEY NICASTRO and STUART STEINBERG had a telephone conversation.

8. On or about July 26, 1973, defendants JAMES PARKER and JANE DOE, a/k/a "Sam" had a telephone conversation.

9. On or about August 26, 1973, defendants SUSAN WEINBLATT and STUART STEINBERG discussed the sale of ten pounds of hashish.

10. On or about August 8, 1973, defendant STEPHEN LEYRON offered to sell three pounds of cocaine to defendant STUART STEINBERG.

11. On or about August 28, 1973, defendant JOHN PIELMAN discussed the sale of fifty pounds of phencyclidine.

(Title 21, United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

On or about the 26th day of June, 1973, in the Southern District of New York, STUART STEINBERG, WILLIAM CATO, and MICHAEL STUST, the defendants, unlawfully, intentionally and knowingly did



(Title 21, United States Code, Sections 812, 841(c)(1) and 841(b)(1)(B).)

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

JA 9  
INDICTMENT

U.S. District Court

FIFTH COUNT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, JAMES BAKER and JANE DOE, a/k/a "Sam", the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

SIXTH COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1973, in the Southern District of New York, JEFFREY FRIEDMAN, the defendant, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

SEVENTH COUNT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, STUART STEINBERG and HOWARD KAYS, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the



JA 10  
INDICTMENT

the telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT EIGHT

The Grand Jury further charges:

On or about the 26th day of July, 1973, in the Southern District of New York, STANLEY NICASTRO and STUART STEINBERG, the defendants, did unlawfully, wilfully, and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT NINE

The Grand Jury further charges:

On or about the 31st day of July, 1973, in the Southern District of New York, WILLIAM CAPO, MICHAEL DURST, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT TEN

The Grand Jury further charges:

On or about the 6th day of August, 1973, in the Southern District of New York, WILLIAM CAPO, MICHAEL DURST, and STUART STEINBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

JA 11  
INDICTMENT

JG:bjt

COUNT ELEVEN

The Grand Jury further charges:

On or about the 6th day of August, 1973, in the Southern District of New York, STUART STEINBERG and STEPHEN BYRON, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT TWELVE

The Grand Jury further charges:

On or about the 8th day of August, 1973, in the Southern District of New York, STUART STEINBERG and STEPHEN BYRON, the defendants, did unlawfully, wilfully, and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

COUNT THIRTEEN

The Grand Jury further charges:

On or about the 2nd day of August, 1973, in the Southern District of New York, SUSAN WEINBLATT, the defendant, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)



JA 12  
INDICTMENT

b6  
b7c

COUNT SEVENTEEN

The Grand Jury further charges:

On or about the 8th day of August, 1973, in the Southern District of New York, SUSAN WEINGLATT, and STUART STERNBERG, the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone, in committing and in causing and facilitating the commission of the conspiracy set forth in Count One of this Indictment.

(Title 21, United States Code, Section 843(b).)

FORTRAN

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York

JPC:nc

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
APPLICATION OF THE UNITED STATES  
OF AMERICA IN THE MATTER OF AN  
ORDER AUTHORIZING THE INTER-  
CEPTION OF WIRE COMMUNICATIONS.  
-----x

ORDER

AUTHORIZING INTERCEPTION OF WIRE COMMUNICATIONS

TO: Special Agents of the Drug Enforcement Administration  
United States Department of Justice

Application under oath having been made before me by the United States through its attorney John P. Conney, Jr., as Assistant United States Attorney for the Southern District of New York, and an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code, for an Order Authorizing the Interception of Wire Communications pursuant to Section 2518 of Title 18, and full consideration having been given to the matters set forth therein, the Court finds:

(a) there is probable cause to believe that Stuart L. Steinberg and others as yet unknown, have committed, and are committing, offenses involving illegal distributing, delivering, and possession with intent to distribute and otherwise illegal dealing in controlled substances, to-wit: Phenycyclidine Hydrochloride (hereinafter referred to as "PCP"), controlled under Schedule III of 21 U.S.C. 812, in violation, respectively, of 21 U.S.C. 841(a); the use of communications facilities in committing or



JPC:nc

causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843(b); and conspiracy to violate the foregoing statute in violation of 21 U.S.C. 846.

(b) there is probable cause to believe that wire communications concerning the offenses described in paragraph (a) above, will be obtained through the interception; authorization for which is herein applied for. In particular, these wire communications will be between Stuart L. Steinberg, his suppliers or customers, and others as yet unknown concerning:

- (1) The date, time, place and manner in which controlled substances in Schedule III will be illegally delivered to or by Stuart L. Steinberg.
- (2) The price Stuart L. Steinberg is to pay or receive for the controlled substances and the date, time, place and manner of payment for the drugs; and
- (3) The nature and extent of the distribution system in which Stuart L. Steinberg and others as yet unknown are involved, the (identification of and) degree of involvement of those persons whose relationship to Stuart L. Steinberg is not fully known, and the identification and degree of involvement of others as yet unknown.

(c) normal investigative procedures have been tried and failed and further normal procedures reasonably appear to be unlikely to succeed and are too dangerous to be used, if tried.

JPG:nc

(d) there is probable cause to believe that the telephones listed and unlisted belonging to Stuart L. Steinberg located at 135 E. 35th, Apartment 2-R, New York, New York and carrying the telephone number 212-889-2606 and 212-889-2674 has been used, is being used, and will be used, in connection with the commission of the offenses described in paragraph (a), and is commonly used by Stuart L. Steinberg and others as yet unknown.

WHEREFORE, it is hereby ordered that:

Special Agents of the Drug Enforcement Administration, United States Department of Justice, are authorized pursuant to application authorized by the Attorney General of the United States, the Honorable Elliot Richardson, under the power conferred on the Attorney General by Section 2516 of Title 18, United States Code to:

- (1) intercept wire communications of Stuart L. Steinberg and others as yet unknown, concerning the above described offenses to and from the telephone listed in the name of Stuart L. Steinberg and located at 135 E. 35th Street, New York, New York and bearing the telephone numbers 212-889-2606 and 212-889-2674.
- (2) such interception shall not automatically terminate when the type of communications described above in paragraph (a) have first been obtained, but shall continue until



WIRETAP ORDER - JULY 20, 1973

communications are intercepted which reveal the details of the scheme which has been used by Stuart L. Steinberg and others as yet unknown, to distribute, deliver and possess with the intent to distribute and otherwise illegally deal in narcotics and dangerous drugs, and the identity of their confederates, their places of operation, and the nature of the conspiracy involved therein or for a period of twenty (20) days from the date of this order, whichever is earlier.

IT IS FURTHER ORDERED, upon request of applicant, that the New York Telephone Company, a communications common carrier as defined in Section 2510(10) of Title 18, United States Code, shall forthwith furnish the applicant and the Drug Enforcement Administration all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the persons whose communications are to be intercepted. The furnishing of such facilities or technical assistance by the New York Telephone Company to be compensated for by the applicant or the Drug Enforcement Administration, United States Department of Justice, at the prevailing rates.

PROVIDING that this authorization to continue to intercept wire communications shall be executed as soon as practicable after the signing of this Order and shall be

Cinc

conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and shall terminate upon attainment of the authorized objective, or in any event, at the end of twenty (20) days from the date of this Order.

PROVIDING ALSO that John P. Cooney, Jr., shall provide the Court with a report on the 5th, 10th and 15th days following the date of this Order showing what progress has been made toward achievement of the authorized objective and need for continued interception.

/s/ CHARLES E. STEWART  
U. S. D. J.

Date: JULY 20, 1973



JTC:nc

JA 18  
JULY 18, 1973 WIRETAP APPLICATION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
APPLICATION OF THE UNITED STATES  
OF AMERICA IN THE MATTER OF ANY  
ORDER AUTHORIZING THE  
INTERCEPTION OF WIRE  
COMMUNICATIONS.

APPLICATION

-----x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN P. COONEY, Jr., as Assistant United States  
Attorney for the Southern District of New York, being duly  
sworn, states:

This sworn application is submitted in support of  
an order authorizing the interception of wire communications.  
This application has been submitted only after lengthy  
discussion concerning the necessity for such an application  
with various officials of the Drug Enforcement Administration  
United States Department of Justice, Washington, D. C.,  
together with agents of the Drug Enforcement Administration.

1. He is an "investigative or law enforcement  
officer -- of the United States" within the meaning of  
Section 2510(7) of Title 18, United States Code -- that is,  
he is an attorney authorized by law to prosecute or partici-  
pate in the prosecution of offenses enumerated in Section  
2516 of Title 18, United States Code.

2. Pursuant to the power conferred on him by  
Section 2516 of Title 18, United States Code, the Attorney  
General of the United States, the Honorable Elliot  
Richardson has authorized this application for an order  
authorizing the interception of wire communications.

IPC:nc

of notification of approval from the Assistant Attorney General of the Criminal Division, the Honorable Henry E. Petersen and the memorandum of authorization approval by the Attorney General of the United States, the Honorable Elliot Richardson.

3. This application seeks authorization to intercept wire communications of Stuart L. Steinberg and others as yet unknown, and their suppliers and customers, concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the illegal distribution, delivery and possession with the intent to distribute and otherwise illegal dealings in narcotics and dangerous drugs, to wit: Phenycyclidine Hydrochloride (hereinafter referred to as "PCP") controlled under Schedule III of 21 U.S.C. 812 in violation of Section 841(a), of Title 21, United States Code; the use of communications facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843(b); and conspiracy to violate the foregoing statutes in violation of 21 U.S.C. 846, which have been committed and are being committed by Stuart L. Steinberg and others as yet unknown.

4. He has discussed all the circumstances of these offenses with Special Agent Brian J. Noone of the New York Office of the Drug Enforcement Administration who has conducted the investigation herein and has examined the affidavit of Special Agent Brian J. Noone (attached to this



JULY 18, 1973 WIRETAP APPLICATION

JPC:ne

application as Exhibit "B", and incorporated by reference herein) which alleges the facts therein in order to show that:

(a) there is probable cause to believe that Stuart L. Steinberg and others as yet unknown, have committed, and are committing, offenses involving illegal distributing, delivering, and possession with intent to distribute and otherwise illegal dealing in controlled substances, to wit: PCP, controlled under Schedule III of 21 U.S.C. 812, in violation, respectively, of 21 U.S.C. 841(a); the use of communications facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843(b); and conspiracy to violate the foregoing statute in violation of 21 U.S.C. 846.

(b) there is probable cause to believe that wire communications concerning the offenses described in paragraph three (3), above, will be obtained through the interception, authorization for which is herein applied for. In particular, these wire communications will be between Stuart L. Steinberg, his suppliers or customers and others as yet unknown concerning:

- (1) the date, time, place and manner in which controlled substances in Schedule III will be illegally delivered to or by Stuart L. Steinberg.
- (2) The price Stuart L. Steinberg is to pay or receive for the controlled substances and the date, time, place and manner of payment for the drugs; and

JFC:nc

- (3) The nature and extent of the distribution system in which Stuart L. Steinberg and others as yet unknown are involved, the (identification of and) degree of involvement of those persons whose relationship to Stuart L. Steinberg is not fully known, and the identification and degree of involvement of others as yet unknown.

(c) Normal investigative procedures have been tried and failed to and further normal procedures reasonably appear to be unlikely to succeed and are too dangerous to be used, if tried.

(d) there is probable cause to believe that the telephone listed and unlisted in the name of Stuart L. Steinberg, located at 135 E. 35th Street, New York, New York, and carrying the telephone number 212-889-2606 and 212-889-2674 has been used, is being used, and will be used, in connection with the commission of the offenses described in paragraph three (3), and is commonly used by Stuart L. Steinberg and others as yet unknown.

5. To my knowledge no other application for authorization to intercept, or for approval of interception of, wire or oral communications involving any of the same persons, facilities, or places specified in this application has been made to any judge by any agent of the United States Government in connection with the instant investigation.

WHEREFORE, your affiant believes that probably cause exists to believe that Stuart L. Steinberg and others



JPC:nc

as yet unknown, are engaged in the commission of the above-described offenses, and that they have used, and are using, the telephone listed and unlisted in the name of Stuart L. Steinberg at 135 E. 35th Street, New York, New York and bearing the telephone number 212-889-2606 and 212-889-2674 in connection with the commission of those offenses, that communications concerning these offenses will be intercepted to and from that telephone, and that normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent Brian Noone, attached hereto and made a part hereof as Exhibit "B" attached affiant herewith requests this court to issue an order, pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, authorizing the Drug Enforcement Administration of the United States Department of Justice to intercept wire communications to and from the above-described telephone until communications are intercepted which reveal the details of the scheme which has been used by Stuart L. Steinberg and others with intent to distribute and otherwise illegally deal in narcotics and dangerous drugs, and the identity of their confederates, their places of operation and the nature of the conspiracy involved therein, or for a period of twenty (20) days from the date of that order, whichever is earlier.

JPC:nc

It is further requested that this court issue an order pursuant to the power conferred on it by Section 2518(4)(e) of Title 18, United States Code, directing that the New York Telephone Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company to be compensated for by the applicant at the prevailing rates.

DATED:

UNITED STATES OF AMERICA

APPLICANT

BY

*John P. Cooney Jr.*  
ASSISTANT U. S. ATTORNEY

AFFIANT

Sworn to before me this

18 day of July, 1973.

*Lynwood Hayes*

LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-1720825  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975

20th of July 1973

*Lynwood Hayes*

LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-1720825  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975



NOONE JULY 18, 1973 AFFIDAVIT JA 24  
IN SUPPORT OF WIRETAP APPLICATION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

"EXHIBIT B"

In the Matter

of

AFFIDAVIT

An Application by the United  
States of America for an Order  
Authorizing the Interception of  
Wire Communications Conducted  
on New York City Telephone  
#212-889-2606 and 839-2674

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

BRIAN J. NOONE, Special Agent of the Drug  
Enforcement Administration, United States Department  
of Justice, being duly sworn, deposes and says:

1. I am an "investigative or law enforce-  
ment officer...of the United States" within the meaning  
of Section 2510(7) of Title 18, United States Code,  
that is, an officer of the United States who is  
empowered by law to conduct investigations of, and to  
make arrests for, offenses enumerated in Section 2516  
of Title 18, United States Code.

2. I make this affidavit in support of an  
application which seeks authorization to intercept  
wire communications to and from telephone numbers  
(212) 889-2606 listed in the name of Stuart L. Steinberg  
located at 135 E. 35th Street, Apartment 2-R, New York,  
New York and (212) 839-2674, an unlisted telephone  
number subscribed to by Stuart L. Steinberg at the  
same address concerning offenses involving violations  
of Sections 312, 341 and 846 of Title 21, United  
States Code, by Stuart L. Steinberg and other persons  
participating with him in said violations.

JTC:ko

3. I have participated in the investigation of the offenses and as a result of my participation in the investigation and of reports made to me by agents with whom I have been working in the investigation, I am familiar with all circumstances of the offenses.

On the basis of that familiarity, I allege the facts contained in the numbered paragraphs to show that:

(a) There is probable cause for belief that Stuart L. Steinberg, and other persons yet unknown have been and are now committing offenses enumerated in section 841 (a) and section 846, Title 21, United States Code - that is, offenses involving the illegal distribution, delivery, possession with intent to distribute and otherwise illegal dealing in controlled substances, to wit: Phencyclidine Hydrochloride (hereinafter referred to as "PCP") - controlled under schedule III of 21 U.S.C. 812, in violation of section 841 (a) of Title 21, United States Code; the use of communication facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. 843 (b); and conspiracy to violate the foregoing statutes in violation of 21 U.S.C. 846, which have been committed and are now being committed by Stuart L. Steinberg, and others as yet unknown.

(b) There is probable cause for belief that particular communications regarding confederates and locations involved in the illegal trafficking of narcotics and dangerous drugs will be obtained through the interception of wire communications, the authorization of which is being hereby applied for;



NOONE JULY 18, 1973 AFFIDAVIT  
IN SUPPORT OF WIRETAP APPLICATION

JA 26

JTC:ho

(c) Normal investigative procedures reasonably appear unlikely to succeed, or are too dangerous to be used;

(d) There is probable cause for belief that a telephone bearing the number (212) 889-2606 and 889-2674 located at 135 E. 35th Street, New York, New York, has been and is being used to carry out the offenses referred to in paragraph 3(a) above, and is more fully set forth hereinafter.

4. On or about June 26, 1973, an informant of Drug Enforcement Administration introduced me to an individual initially identified only as "Stewie Crystal" at 135 E. 35th Street, at Apartment 2-R and on that date I received a free sample of 1.8 grams of "TCP" from "Stewie Crystal". On the same date, "Stewie Crystal" gave me the telephone numbers (212) 889-2606 and 889-2674 as the telephone numbers of his apartment where he could be contacted for future transactions. Through reference to the register of apartments at 135 E. 35th Street and through a check with the New York Telephone Security Office, it was determined that the telephone numbers (212) 889-2606 and 889-2674 and apartment 2-R at 135 E. 35th Street are registered to Stuart L. Steinberg.

5. On or about the evening of June 27, 1973, I telephoned Stuart L. Steinberg, using telephone number 889 2606, told Steinberg that I would come to Steinberg's apartment for the purpose of purchasing

JTC:ko

two (2) ounces of PCP. When Steinberg agreed to this, I proceeded to abovementioned apartment and there purchased fifty-eight (58) grams of PCP for \$2400 from Stuart L. Steinberg.

6. On or about July 2, 1973, I telephoned Stuart L. Steinberg using the telephone number 889-2606 and stated that I and my "people" were pleased with the quality of the PCP purchased on June 27, 1973 and that I and my people might be interested in purchasing either one-half pound or one pound of PCP from Stuart L. Steinberg. Stuart L. Steinberg agreed to this proposition and Steinberg requested that I specify the exact weight so that Steinberg could, in turn, contact "his people" to make the quantity available. On July 3, 1973, I telephoned Steinberg using the telephone number 889-2606 and informed Steinberg that I had been unable to contact the principal for whom I was purchasing PCP and that further discussion of a second purchase of PCP from Steinberg should be put off until July 10, 1973. Steinberg acquiesced in this arrangement.

7. On or about the evening of July 10, 1973, I telephoned Steinberg using telephone number 889-2606 and informed Steinberg that I wished to come to Steinberg's apartment to discuss the quantity of the proposed second purchase of PCP from Steinberg. When Steinberg agreed to this, I went to Steinberg's apartment at 135 E. 35th Street and proposed to purchase



JB:hs

from Steinberg one-half pound of PCP for a price of \$8800. Steinberg agreed to this offer and immediately called "his people" so that the PCP would be delivered to Steinberg at his apartment for sale to me later that evening. During the course of his conversation, Steinberg informed "his people" that I would not be there when they arrived, and that he was aware that they did not want to meet me and that I did not wish to meet them. Later that evening, I returned to Steinberg's apartment accompanied by Special Agent Arthur Anderson who was acting in an undercover capacity and, who was introduced to Steinberg as the principal for whom I had been acting. At the apartment, Steinberg delivered the one-half pound of PCP to me in exchange for \$8800, as witnessed by Special Agent Anderson. At the same time, Steinberg and Special Agent Anderson and I discussed a third purchase of PCP which was to be in the amount of twenty (20) pounds. Steinberg instructed me to telephone him at 11:00 p.m. this same evening after he had had an opportunity to speak to "his people" about this proposed sale. Pursuant to this request, I telephoned Steinberg using telephone number 889-2606 at or about 11:00 p.m. at which time Steinberg stated that "his people" had just left his apartment and that they wanted to know the quantity of PCP which Special Agent Anderson and I wanted to purchase. Steinberg told me that "his people" could sell Special Agent

Anderson and I from twenty (20) to fifty (50) pounds of PCP if we had the cash to make such a purchase. I told Steinberg that we would purchase fifty (50) pounds of PCP and that cash represented no problem to us.

8. On various dates after this meeting, I telephoned Steinberg using 889-2606 to check on the status of the proposed third sale. On these occasions, Steinberg told me that he had not heard from "his people" and therefore, was unable to proceed with this proposed transaction.

9. On or about July 16, 1973, I telephoned Steinberg using 889-2674 and, after I inquired about the status of the proposed third purchase of PCP, Steinberg informed me that he and "his people" could sell me twenty (20) pounds of PCP, that the sale could be consummated on Monday, July 23, 1973, and that he would inform me of the details of the transaction at a later time.

10. From my experience, and knowledge of the facts developed in this investigation to date, it appears that Stuart L. Steinberg, and "his people" are engaged in major distributions of PCP. This conclusion is based on the deliveries of PCP made to me by Stuart L. Steinberg and the statements made to me by him that:

A. He could supply fifty (50) pounds of PCP to me.

11. On July 18, 1973, I telephoned Steinberg

and he informed me that he had not heard from "his people"



JTC:ko

B. He could, over a period of time, supply an unlimited amount of PCP to me from an out of state laboratory; and the presence of drug distribution equipment in his apartment, including scales and weights, which I observed in my contacts with Steinberg.

11. Normal investigative procedures have not succeeded in establishing the full extent of the activities conducted by Stuart L. Steinberg related to the purchase or sale of controlled substances, nor have the location and identity of the source of Stuart L. Steinberg's supply been established. Normal investigative procedures reasonably appear to be unlikely to succeed in obtaining the evidence necessary for the following reasons:

A. At this time there is no known undercover access to his supplier and no chance of developing such access because of the covert manner in which Stuart L. Steinberg operates; and

B. My experience and the experience of other Special Agents of the Drug Enforcement Administration has shown that individuals dealing in large quantities of narcotics are particularly covert in their activities and wary of surveillance by Federal and State law enforcement personnel. Such dealers very rarely keep records, deal personally with a very few trusted individuals and isolate themselves from other individuals in the distribution organization.

12. In my opinion the intercepting of wire communications conducted by Stuart L. Steinberg

TC:ko

over the telephones having numbers (212) 889-2606 and 889-2674 in conjunction with substantial controlled "orders" of PCP will disclose sufficient information to determine those from whom Stuart L. Steinberg is obtaining his supply, and to whom he is selling PCP, as well as the times, dates, places, and manner in which deliveries are effected.

13. For the reasons set out above all normal avenues of investigation are closed and it is my belief that the only reasonable way to develop the necessary evidence of violations of Sections 812, 841 and 846 of Title 21, United States Code, by Stuart L. Steinberg and his confederates is to intercept wire communications to and from the telephone described in paragraph 3(d) above.

14. I have not, nor has any other agent of the United States Government to my knowledge, made any application to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in this affidavit.

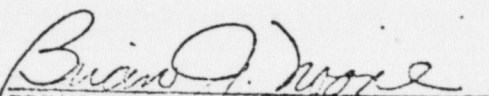
WHEREFORE, your deponent respectfully requests this Court to issue an order pursuant to the power conferred on it by Title 18, United States Code, Section 2518, authorizing the Drug Enforcement Administration, Department of Justice, to intercept wire communications to and from (212) 889-2606



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and 889-2674 located at 135 E. 35th Street, Apartment 2-R, New York, New York, for a period of 20 days from the effective date of that order or until such time as communications are intercepted which will:

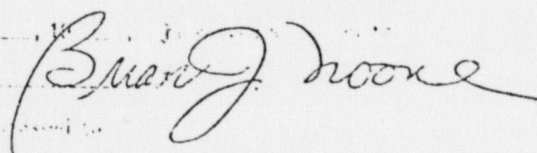
(a) reveal the identity of person or persons from whom Stuart L. Steinberg is illegally obtaining his drugs; (b) reveal the identity of any person or persons to whom he may be illegally selling drugs; and (c) reveal any other information as to the extent that Stuart L. Steinberg is involved in trafficking in illicit narcotics and dangerous drugs in violation of sections 812, 841 and 846 of Title 21, United States Code, and which reveal the identities of his confederates, their places of operation, and the nature of the conspiracy involved therein.

  
BRIAN J. NOONE  
Special Agent  
Drug Enforcement Administration

Sworn to before me

this 18 of July 1973 at the United States Attorney's Office

LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-172335  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975

  
This 20th Day of July 1973  
Lynwood Hayes

LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-172335  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975

JPL:art

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
APPLICATION OF THE UNITED STATES :  
OF AMERICA IN THE MATTER OF AN :  
EXTENSION OF ORDERS AUTHORIZING :  
THE INTERCEPTION OF WIRE :  
COMMUNICATIONS AND AUTHORIZING :  
PEN REGISTER DEVICES. :  
-----X

ORDER

EXTENDING THE AUTHORIZED INTERCEPTION OF WIRE  
COMMUNICATIONS AND INSTALLATION OF PEN REGISTER  
DEVICES.

TO: Special Agents of the Drug Enforcement Administration  
United States Department of Justice

Application under oath having been made before  
me by the United States through its attorney James P. Lavin,  
as Assistant United States Attorney for the Southern District  
of New York, and an "Investigative or law enforcement officer"  
as defined in Section 2510(7) of Title 18, United States Code,  
for an Order Extending the Orders of the Honorable Charles E.  
Stewart Jr., of July 20, 1973, Authorizing the Interception  
of Wire Communications pursuant to Section 2518 of Title 18,  
and the Installation of a pen register device and full con-  
sideration having been given to the matters set forth therein,  
the Court finds:

(a) there is probable cause to believe that  
Stuart L. Steinberg and others as yet unknown, have committed,  
and are committing, offenses involving illegal distributing,  
delivering, and possession with intent to distribute and  
otherwise illegal dealing in controlled substances, to wit:  
Phencyclidine Hydrochloride (hereinafter referred to as  
"PCP"), Seconal, and Tuinal, controlled under Schedule III  
of Title 21, United States Code, Section 812, Hashish,



JPC:lq

controlled under Schedule I of Title 21, United States Code, Section 812, and Cocaine Hydrochloride, controlled under Schedule II of Title 21, United States Code, Section 812, in violation, respectively, of Title 21, United States Code, Section 841(a), the use of communications facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of Title 21, United States Code, Section 843(b); and conspiracy to violate the foregoing statute in violation of Title 21, United States Code, Section 846.

(b) there is probable cause to believe that wire communications concerning the offenses described in paragraph (a) above, will continue to be obtained through the wire interception and pen register devices, as authorized by the abovementioned Orders of the Honorable Charles E. Stewart Jr., and as extended by the order of the Court. In particular, these wire communications will be between Stuart L. Steinberg, his suppliers or customers, and others yet unknown concerning:

- (1) The date, time, place and manner in which controlled substances in Schedules I, II and III will be illegally delivered to or by Stuart L. Steinberg.
- (2) The price Stuart L. Steinberg is to pay to receive for the controlled substances and the date, time place and manner of payment for the drugs; and
- (3) The nature and extent of the distribution system in which Stuart L. Steinberg and others as yet unknown are involved, the (identification of and)

JPG:1q

degree of involvement of those persons whose relationship to Stuart L. Steinberg is not fully known, and the identification and degree of involvement of others as yet unknown.

(c) normal investigative procedures have been tried and failed and further normal procedures reasonably appear to be unlikely to succeed and are too dangerous to be used, if tried.

(d) there is probable cause to believe that the telephones listed and unlisted belonging to Stuart L. Steinberg located at 135 E. 35th, Apartment 2-R, New York New York and carrying the telephone number 212-889-2606 and 212-889-2674 have been used, are being used, and will continued to be used, in connection with the commission of the offenses described in paragraph (a), and are commonly used by Stuart L. Steinberg and others as yet unknown.

WHEREFORE, it is hereby ordered that:

The Orders of the Honorable Charles E. Stewart Jr., dated July 20, 1973 that Special Agents of the Drug Enforcement Administration, United States Department of Justice, are authorized:

(1) pursuant to application authorized by the Attorney General of the United States, the Honorable Elliot Richardson, under the power conferred on the Attorney General by Section 2516 of Title 18, United States Code to intercept wire communications of Stuart L. Steinberg and others as yet unknown, concerning the above described

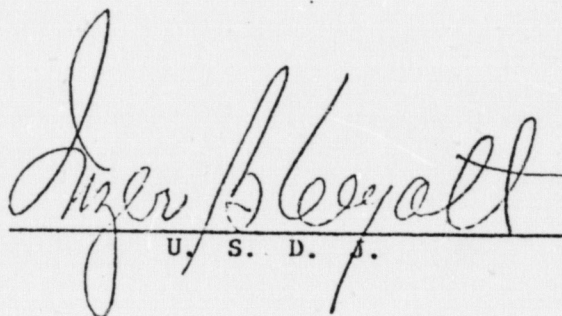


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offenses to and from the telephone listed in the name of Stuart L. Steinberg and located at 135 E. 35th Street, New York, New York, and bearing the telephone numbers 212-889-2606 and 212-889-2674 for a period of twenty (20) days; and  
(2) to install one pen-register device in each telephone transmission line for the above-mentioned telephone numbers for the same twenty (20) day period;

be extended for a period of ten (10) days from the date of this order.

IT IS FURTHER ORDERED that all conditions, directives and requirements of said orders of the Honorable Charles E. Stewart Jr., be continued and in force during the extension provided for hereby.

  
U. S. D. J.

Date: August 20, 1973

JPL:rs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
: APPLICATION OF THE UNITED STATES  
: OF AMERICA IN THE MATTER OF AN :  
: EXTENSION OF AN ORDER AUTHORIZING : APPLICATION  
: THE INTERCEPTION OF WIRE COMMUNICATIONS :  
: AND THE INSTALLATION OF PEN REGISTER :  
: DEVICES :  
-----x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

JAMES P. LAVIN, as Assistant United States Attorney  
for the Southern District of New York, being duly sworn,  
states that:

(1) This sworn application is submitted in support  
of an order extending the authorizations given by the  
Honorable Charles E. Stewart, Jr. on July 20, 1973 for the  
interception of wire communications and the installation of  
pen register devices. This application has been submitted  
only after lengthy discussion concerning the necessity for  
such an application with various officials and agents of the  
Drug Enforcement Administration and officials of the Depart-  
ment of Justice in Washington, D.C.

(2) Attached hereto and incorporated herein by  
reference are the Order of the Honorable Charles E. Stewart,  
Jr. authorizing interception of Wire Communications dated  
July 20, 1973 (Exhibit A hereto), the application of John P.  
Cooney for said Order (Exhibit B), the authorizations for  
said applications from Elliot Richardson, the Attorney  
General of the United States (Exhibits C, D, and E), the



JPC:rs

affidavit of Brian J. Noone, Special Agent of the Drug Enforcement Administration, submitted in support of said application (Exhibit F), the Order of the Honorable Charles E. Stewart, Jr. authorizing the installation of pen registers dated July 20, 1973 (Exhibit G), and the affidavit of Brian J. Noone, Special Agent of the Drug Enforcement Administration, submitted in support of said Order (Exhibit H).

3. Pursuant to the power conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable Elliot Richardson has authorized this Application for the extension of the Order authorizing the interception of Wire Communications. Attached hereto and incorporated herein by reference is the memorandum of authorization approval by the Attorney General Elliot Richardson (Exhibit I).

4. This Application seeks authorization to continue the interception of Wire Communications and pen register devices on the telephone lines of Stuart L. Steinberg and others as yet unknown, and their suppliers and customers, concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the illegal distribution, delivery and possession with the intent to distribute and otherwise illegal dealings in narcotics and dangerous drugs, to wit: Phenycyclidine Hydrochloride (hereinafter referred to as "PCP"), seconal, and tuinal controlled under Schedule III of Title 21, U.S.C. §812, cocaine hydrochloride controlled under Schedule II of that section, and hashish, controlled under Schedule I of

JPC:rs

that section in violation of Section 841(a), of Title 21, United States Code; the use of communications facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C.



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843(b); and conspiracy to violate the foregoing statutes in violation of 21 U.S.C. 846, which have been committed, are being committed and will continue to be committed by Stuart L. Steinberg and others as yet unknown.

5. He has discussed all the circumstances of these offenses with Special Agent Brian J. Noone of the New York Office of the Drug Enforcement Administration who has conducted the investigation herein and has examined the affidavit of Special Agent Brian J. Noone (attached to this application as Exhibit "J", and incorporated by reference herein) which alleges the facts therein in order to show that:

(a) there is probable cause to believe that Stuart L. Steinberg and others as yet unknown, have committed, are committing, will continue to commit offenses involving illegal distributing, delivering, and possession with intent to distribute and otherwise illegal dealing in controlled substances, to wit: PCP, seconal, tuinal, controlled under Schedule III, cocaine hydrochloride controlled under Schedule II, and hashish controlled Schedule I of Title 21 U.S.C. §812, in violation, respectively, of Title 21 U.S.C. §841(a); the use of communications facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of Title 21 U.S.C. §843(b); and conspiracy to violate the foregoing statute in violation of Title 21 U.S.C. §846.

(b) there is probable cause to believe that

JPG:bj

wire communications concerning the offenses described in paragraph three (3), above, will continue to be obtained through the interception and pen registers, extended authorization for which is herein applied for hereby.

In particular, these wire communications will be between Stuart L. Steinberg, his suppliers or customers and others as yet unknown concerning:

- (1) the date, time, place and manner in which controlled substances in Schedule I, II and III will be illegally delivered to or by Stuart L. Steinberg.
- (2) The price Stuart L. Steinberg is to pay or receive for the controlled substances and the date, time, place and manner of payment for the drugs; and
- (3) The nature and extent of the distribution system in which Stuart L. Steinberg and others as yet unknown are involved, the (identification of and) degree of involvement of these persons whose relationship to Stuart L. Steinberg is not fully known, and the identification and degree of involvement of others as yet unknown.

(c) Normal investigative procedures have been tried and failed to and further normal procedures reasonably appear to be unlikely to succeed and are too dangerous to be used, if tried.



JPC:bj

(d) there is probable cause to believe that the telephone listed and unlisted in the name of Stuart L. Steinberg, located at 135 E. 35th Street, New York, New York, and carrying the telephone number 212-889-2606 and 212-889-2674 has been used, is being used, and will continue to be used, in connection with the commission of the offense described in paragraph three(3), and is commonly used by Stuart L. Steinberg and others as yet unknown.

6. To my knowledge no other application, aside from the applications and order of the Honorable Charles E. Stewart Jr. of July 20, 1973 the extension of which is hereby applied for, for authorization to intercept, or for approval of interception of wire or oral communications involving any of the same persons, facilities, or places specified in this application has been made to any judge by any agent of the United States Government in connection with the instant investigation.

WHEREFORE, your affiant believes that probably cause exists to believe that Stuart L. Steinberg and others as yet unknown, are, will continue to be engaged in the commission of the above-described offenses, and that they have used, are using and will continue to use the telephones listed and unlisted in the name of Stuart L. Steinberg at 135 E. 35th Street, New York, New York and bearing the telephone number 212-889-2606 and 212-889-2674 in connection with the commission of those offenses, that communications

JPC:bj

concerning these offenses will be intercepted to and from that telephone, and that normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent Brian Noone, attached hereto and made a part hereof as Exhibit "J" affiant herewith requests this court to issue an order, pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, extending the authorization by the Honorable Charles E. Stewart Jr., that the Drug Enforcement Administration of the United States Department of Justice intercept wire communications to and from the above-described telephone and install pen-register devices on said telephones until communications are intercepted which reveal the details of the scheme which has been used by Stuart L. Steinberg and others with intent to distribute and otherwise illegally deal in narcotics and dangerous drugs, and the identity of their confederates, their places or operation and the nature of the conspiracy involved therein, or for a period of twenty (20) days from the date of that order, whichever is earlier, for a period of ten days from the date of that order.

It is further requested that this order pursuant to the power conferred on it by Section 2518(4)(e) of Title 18, United States Code, direct that the New York Telephone



AUGUST 20, 1973 WIRETAP RENEWAL APPLICATION JA - 44

JPC:bj

Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall continue to furnish the applicant forthwith all information facilities and technical assistance necessary to accomplish the interception and installation of pen register devices unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the continued furnishing of such facilities or technical assistance by the New York Telephone Company to be compensated for by the applicant at the prevailing rates.

DATED:

UNITED STATES OF AMERICA

APPLICANT

BY,

*James P. Brown*

ASSISTANT U. S. ATTORNEY

AFFIANT

Sworn to before me this

20th day of August, 1973.

*Walter G. Brannon*

WALTER G. BRANNON  
Notary Public, State of New York  
No. 24-039480  
Qualified in Kings County  
Cert. filed in New York County  
Term Expires March 30, 1975

JPC:emw

NOONE AUGUST 20, 1973 AFFIDAVIT  
IN SUPPORT OF WIRETAP RENEWAL AFFIDAVIT JA 45  
UNITED STATES DISTRICT COURT "EXHIBIT A"  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In the Matter :  
of :

AFFIDAVIT

An Application by the United States  
of America for an Order Extending :  
the Authorization for Pen-Register :  
Devices and the Interception of :  
Wire Communications Conducted on :  
New York City Telephone #212-889- :  
2606 and 889-2674. :  
-----x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

BRIAN J. NOONE, Special Agent of the Drug  
Enforcement Administration, United States Department of  
Justice, being duly sworn, deposes and says:

1. I am an "Investigative or law enforcement  
officer...of the United States" within the meaning of  
Section 2510(7) of Title 18, United States Code, that is,  
an officer of the United States who is empowered by law to  
conduct investigations of, and to make arrests for, offenses  
enumerated in Section 2516 of Title 18, United States Code.

2. I make this affidavit in support of an  
application which seeks the extension of the authorization  
to install pen register devices and to intercept wire  
communications to and from telephone numbers (212) 889-2606  
listed in the name of Stuart L. Steinberg located at  
135 E. 35th Street, Apartment 2-R, New York, New York and  
(212) 889-2674, an unlisted telephone number subscribed to



NOONE AUGUST 20, 1973 AFFIDAVIT  
IN SUPPORT OF WIRETAP RENEWAL AFFIDAVIT JA 46

by Stuart L. Steinberg at the same address concerning offenses involving violations of Sections 812, 841 and 846 of Title 21, United States Code, by Stuart L. Steinberg and other persons participating with him in said violations.

3. I have participated in the investigation of the offenses and as a result of my participation in the investigation and of reports made to me by agents with whom I have been working in the investigation, I am familiar with all circumstances of the offenses. On the basis of that familiarity, I allege the facts contained in the numbered paragraphs to show that:

(a) There is probable cause for belief that Stuart L. Steinberg, and other persons yet unknown have been, are now and will continue to commit offenses enumerated in section 841(a) and section 846, Title 21, United States Code - that is, offenses involving the illegal distribution, delivery, possession with intent to distribute and other wise illegal dealing in controlled substances, to wit: Phenycyclidine Hydrochloride (hereinafter referred to as "PCP"), Seconal and Tuinal controlled substances under schedule III; Cocaine, a controlled substance under schedule II; Hashish controlled substance under schedule I of Title 21, U.S.C. §812, in violation of section 841(a) of Title 21, United States Code; the use of communication facilities in committing or causing the facilitation of the commission of the foregoing offenses in violation of 21 U.S.C. §843(b); and conspiracy to violate the foregoing statutes in violation of 21 U.S.C. §846, which have been committed and are now being

committed by Stuart L. Steinberg, and others as yet unknown;

(b) There is probable cause for belief that particular communications regarding confederates and locations involved in the illegal trafficking of narcotics and dangerous drugs will be obtained through the continued interception of wire communications and installation of pen-register devices, the extended authorization for which is applied for herein;

(c) Normal investigative procedures reasonably appear unlikely to succeed, or are too dangerous to be used;

(d) There is probable cause for belief that a telephone bearing the number (212) 889-2606 and 889-2674 located at 135 E. 35th Street, New York, New York, has been, is being, and continue to be used to carry out the offenses referred to in paragraph 3(a) above, and is more fully set forth herein-after.

4. Pursuant to the Order of the Honorable Charles E. Stewart, Jr. of July 20, 1973, 975 telephone communications over the above-mentioned telephone lines have been intercepted by the agents of Drug Enforcement Administration. Of these 975 telephone communications, approximately 125 telephone communications of Stuart L. Steinberg have involved the purchase or sale of narcotics. The most concentrated and significant telephone communications involving possible violations of the sections described in paragraph (3) of this affidavit, occurred on the following dates:



NOONE AUGUST 20, 1973 AFFIDAVIT  
IN SUPPORT OF WIRETAP RENEWAL AFFIDAVIT

JA 48

(a) On July 25, 1973, Stuart Steinberg informed your affiant by telephone that he would be unable to deliver the fifty (50) pounds of PCP originally ordered by your affiant because his chemist in Philadelphia made a batch of PCP that was below an acceptable quality. In the same conversation, Stuart Steinberg stated a transaction in cocaine would be possible while an alternative source for PCP was obtained. Subsequently, Stuart Steinberg contacted John Doe a/k/a "David" who stated that he could acquire twelve (12) pounds of cocaine from his source of supply for the purpose of selling this cocaine to your affiant. In another conversation on this date, John Doe a/k/a "David" and Stuart Steinberg discussed the price to be charged to your affiant for this cocaine and their profit from the proposed sale. As a result of these telephone communications, your affiant met with John Doe a/k/a "David" and Stuart Steinberg at Stuart Steinberg's apartment. At this meeting, John Doe a/k/a "David" informed your affiant that the quality of the cocaine which he had examined for the purpose of obtaining to sell to your affiant was of a poor quality and therefore had not been purchased;

(b) On July 31, 1973, Stuart Steinberg had a telephone conversation with John Doe a/k/a "Billy" in which the latter agreed to go to Chicago for the purpose of acquiring good quality PCP for the purpose of selling this PCP to your affiant. Also, Stuart Steinberg had conversation with John Doe a/k/a David concerning their acquisition of

JPC:enw

50,000 tablets of seconal, tuinal and quaalide. Later, John Doe a/k/a "David" made a telephone call from Stuart Steinberg's apartment to Jeff Priestman in which he insisted that the latter individual hold all 50,000 tablets for purchase by John Doe a/k/a "David" and Stuart Steinberg;

(c) On August 1, 1973, John Doe a/k/a Mickey telephoned Stuart Steinberg and informed him that he, John Doe a/k/a "Mickey," had sixty (60) pounds of "blond" hashish for sale. In response, Stuart Steinberg indicated that he would try to find a purchaser for this hashish. Also, Stuart Steinberg and John Doe a/k/a "David" had a telephone conversation dealing with the price per tablet of seconal, tuinal and quaalide which should be charged your affiant. It was decided that the price per tablet should be \$.65, or \$32,500 for 50,000 tablets;

(d) On August 2, 1973, Stuart Steinberg was called by John Doe a/k/a "David" and discussed the price which should be charged your affiant in his purchase of the abovementioned sixty (60) pounds of hashish. It was decided that the price should be \$1,000 per pound;

(e) On August 6, 1973, Susan Weinblatt telephoned Stuart Steinberg and was instructed by Steinberg that she should come to his apartment, pick up money, and then proceed to Jeff Priestman's apartment and there purchase an unspecified quantity of the abovementioned tablets. Subsequently, Susan Weinblatt again telephoned Stuart Steinberg and informed him that "the mission was accomplished"



and that she would be coming over to Steinberg's apartment shortly with some of the tablets which had been obtained.

5. During the period from July 20, 1973 to and including August 7, 1973, your affiant has been in continuous telephone and personal contact with Stuart Steinberg for the purpose of purchasing the fifty (50) pounds of PCP which was the subject of the original contact in this case. On the evening of August 7, 1973, your affiant had a telephone conversation with Stuart Steinberg in which he was told that a portion of this PCP would be made available for purchase by your affiant on Friday, August 10, 1973.

6. Normal investigative procedures, the interception of wire communications, and the maintenance of pen-register devices have not yet succeeded in establishing the full extent of the activities conducted by Stuart L. Steinberg related to the purchase or ~~sale~~ of controlled substances, nor have the location and identity of the sources of Stuart L. Steinberg's supply been established. Normal investigative procedures reasonably appear to be unlikely to succeed in obtaining the evidence necessary for the following reasons:

A. At this time there is no known undercover access to his supplier and no chance of developing such access because of the covert manner in which Stuart L. Steinberg operates; and

B. My experience and the experience of other Special Agents of the Drug Enforcement Administration has shown that individuals dealing in large quantities of narcotics are particularly covert in their activities and wary of surveillance by Federal and State law enforcement

NOONE AUGUST 20, 1973 AFFIDAVIT  
IN SUPPORT OF WIRETAP RENEWAL AFFIDAVIT JA 51

personnel. Such dealers very rarely keep records, deal personally with a very few trusted individuals and isolate themselves from other individuals in the distribution organization.


7. In my opinion the continued intercepting of wire communications conducted by Stuart L. Steinberg and maintenance of pen-register devices on telephones having numbers (212) 889-2606 and 889-2674 in conjunction with substantial controlled "orders" of PCP will disclose sufficient information to determine those from whom Stuart L. Steinberg is obtaining his supply, and to whom he is selling PCP, as well as the times, dates, places, and manner in which deliveries are effected.

8. For the reasons set out above all normal avenues of investigation are closed and it is my belief that the only reasonable way to develop the necessary evidence of violations of Sections 812, 841 and 846 of Title 21, United States Code, by Stuart L. Steinberg and his confederates is to continue to intercept wire communications to and from the telephone described in paragraph 3(d) above and maintain pen register devices on said telephones.

9. I have not, nor has any other agent of the United States Government to my knowledge, made any application to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in this affidavit aside from the application made in support of the orders of the Honorable Charles E. Stewart, Jr., the extension of which are hereby applied for.

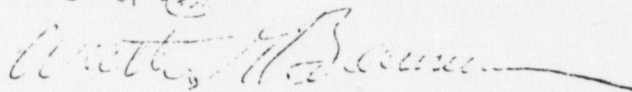


WHEREFORE, your deponent respectfully requests this Court to issue an order pursuant to the power conferred on it by Title 18, United States Code, Section 2518, extending the authorization of the Drug Enforcement Administration, Department of Justice, to intercept wire communications to and from (212) 889-2606 and 889-2674 located at 135 E. 35th Street, Apartment 2-R, New York, New York, and maintain pen-register devices of said telephone lines for a period of 10 days from the effective date of that order or until such time as communications are intercepted which will: (a) reveal the identity of person or persons from whom Stuart L. Steinberg is illegally obtaining his drugs; (b) reveal the identity of any person or persons to whom he may be illegally selling drugs; and (c) reveal any other information as to the extent that Stuart L. Steinberg is involved in trafficking in illicit narcotics and dangerous drugs in violation of sections 812, 841 and 846 of Title 21, United States Code, and which reveal the identities of his confederates, their places of operation, and the nature of the conspiracy involved therein.

  
BRIAN J. NOZLE  
Special Agent  
Drug Enforcement Administration

Sworn to before me

August 20, 1973.



WALTER G. BRANNON  
Notary Public, State of New York  
No. 24-013500  
Qualified in Kings County  
Cert. filed in New York County  
Term Expires March 31, 1975

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

-against-

STUART STEINBERG, et al.,

Defendants.

:  
73 Civ. 1095  
R.J.W.  
:  
:  
:

-----X

Defendant Stuart Steinberg moves, and defendants John Perlman, Stephen Effron, Howard Kaye and James Parker join, in a motion for an order pursuant to Rules 12(b) and 41(f), Fed. R. Crim. P., 18 U.S.C. §2518(10)(a), and the Fourth Amendment to the United States Constitution suppressing the contents of all intercepted conversations and evidence derived therefrom. For the reasons which follow, the motion is denied.

The evidence sought to be suppressed includes the contents of telephone conversations intercepted pursuant to orders of this Court dated July 20, 1973 and August 20, 1973, and all evidence derived therefrom, upon the grounds that the communications were unlawfully intercepted, the orders of authorization under which the communications were intercepted are insufficient on their face, and the interceptions were not made in conformity with the orders of authorization.



Steinberg argues that the issuance of the wiretap order of July 20, 1973 was unjustified and that the facts submitted to the judge to whom the application for an order was made were inadequate. Defendant argues that in violation of 18 U.S.C. §§2518(1)(c) and (3)(c), wiretapping was resorted to reflexively as the initial step in the government's investigation despite the availability and practicability of traditional investigative techniques. However, a review of the government's application belies this argument. The investigation had been in progress for almost a month, \$11,200 in government funds had been expended to purchase approximately three-quarters of a pound of phenycyclidine hydrochloride ("PCP"), a controlled substance, from Steinberg, and his source or sources of the controlled substance remained undisclosed. While defendant argues that traditional investigative techniques would have sufficed, the fact is that they had not up to that point. This Court finds that the application substantially complied with the statutory requirement and the issuance of the July 20, 1973 order was proper. See U.S. v. Falcone, 364 F. Supp. 877, 889-890 (D.N.J. 1973).

Steinberg next argues that continuation on the wiretap beyond the first interception was illegal since the original and renewal wiretap applications failed to specifical-

ly request that the authorization to intercept not automatically terminate upon the first interception of a communication of the type described in the application and failed to include a description of facts establishing probable cause to believe that more than one communication of the type described would occur.

Since the nature of the investigation was such as to embrace the conduct of multiple parties over a period of time, a continuation on the wiretap beyond the first interception was justified and met Fourth Amendment requirements. See U.S. v. Poeta, 455 F.2d 117, 120-121 (2d Cir. 1972).

In addition, Steinberg argues that the order of August 20, 1973 was unlawful in that there was no showing of probable cause as of the time it was issued. He argues that the information asserted as the predicate for probable cause on August 20, 1973 was stale in that all of the underlying facts had occurred on and before August 7. Inasmuch as Steinberg has not refuted the government's allegation that he was on vacation during most of the intervening 13 days, and since there is no indication that anything else had changed, this argument must fail.

Steinberg next argues that the alleged failure to seal the application to renew the initial wiretap order




violates 18 U.S.C. §2518(8)(b) and that all communications intercepted pursuant to both orders must be suppressed.

Defendant misconceives the statutory purpose for sealing and offers no federal case support for his argument. Indeed, contrary authority is found in U.S. v. Cantor, 470 F.2d 890, 892-893 (3d Cir. 1972). Absent a showing of prejudice to any of the defendants, this branch of the motion must be denied.

Finally, defendant argues that a minimization hearing is required based on a comparison of the number of calls intercepted with the number of pertinent calls as set forth in the affidavit of Special Agent Frederic Boff, dated November 28, 1973. Defendant having made no prima facie showing based on the wiretap logs which have been made available to counsel, this branch of the motion must also be denied. Accordingly, the motion is in all respects denied.

It is so ordered.

Dated: December 27, 1974

  
\_\_\_\_\_  
U. S. D. J.

SS Stuart STEINBERG.

AS Alyce SAMET

(MUSIC AUDIBLE IN BACKGROUND FOR PART OF CONVERSATION)

SS Hello?

AS Stuart? Hello now.

SS Yes? Hello to you.

AS Yeah, this is Alyce.

SS Who? Hello now.

AS Alyce.

SS Ok.

AS Ok. If David, if you speak to David tonight?

SS Yes? Hello now.

AS Tell him to call me.

SS Who?

AS Alyce.

SS Alyce?

AS Right.

SS If I speak to David...

AS Tell him to call me.

SS Who's Alyce?

AS What?

SS Who is...uh...who is Alyce?

AS Who's David?

SS Who's Alyce?

AS Who's Alyce?

SS Who's Alyce?

AS Alyce is the blonde that you were talking to before that couldn't

come over your place.

SS Ok.



AS OK.

SS David to Alyce...

AS Yes. Tell David to call me...

SS How far...

AS (inaudible) more crystal?

SS What? How far away is it?

AS How far away is what?

SS Is Alyce to David?

AS (Tehh')

SS David's here now.

AS Oh lemme talk to him.

SS He's in a...he's in the bathroom.

AS Ok, I'll hold on...

SS Well...h....

AS Is Sandy there too?

SS What?

AS Is Sandy at your house also?

SS Who?

AS Sandy...

SS Yeah, she's here too...

AS She's here too?

SS Yeah.

AS Let me talk to her.

SS She's in the bathroom too.

AS She's in the bathroom too?

SS How far away are you? Where are you calling from?

AS Where am I call....Manhattan.

SS Where in Manhattan?

AS Manhattan...where (inaudible)

SS C'mon, come on over.

AS 23rd Street.

SS Come on over.

AS I can't. I've got work tomorrow.

SS Come on both over.

AS What?

SS Come both over.

AS I can't. I got work tomorrow.

SS Well...d...it's ok. Both come over.

AS Wha!?

SS Both come over.

AS Tell who to come over?

SS Both of you come over..

AS Let...lemme speak to somebody.

SS Y...f...uh...someone else? Ok.

AS Yeah, ok. Lemme speak to someone else.

SS Ok, hel...hello?

AS Yeah?

SS Yeah, this is David.

AS What? (laughs)

SS David.

AS David what? (laughs)

SS David, David, David, David (inaudible) David.

AS Stuart!

SS David, David (inaudible) David.

AS David's in the bathroom.

SS No, David's (inaudible) David's (inaudible) bathroom.

AS I'll let you go to sleep Stuart.

SS What?

AS I'll let you go to sleep.

SS Who's this?

AS Alyce.

SS Alyce, come on.

AS Come on what?

SS 1-135 East 35th Street.

AS What?

SS 135 East 35th.

AS You...are so...stoned!

SS Come on Alyce.



AS You sm...you smoked more crystal since I (inaudible)

SS Come on Alyce.. 135 East 35th. We'll get it together.

AS Look, I know where you live. Who...who else is at your house?

SS Oh, a lot of people here.

AS Is Candy there?

SS Yeah.

AS Lemme speak to Candy...

SS Candy! Candy! Candy! Candy's here. Candyyyy! Candy's here. Candy's here. They're all here. They're all here. Come on over, ok?

AS Lemme speak to somebody.

SS She's here. She's here.

AS Stuart, you're imagining things. No one's there.

SS She's here, She's here.

AS When you speak to David, let...tell David to call me.

SS She's here. Will you be here?

AS What?

SS Will you be here?

AS No, tell him to call me.

SS Where are you?

AS At home.

SS Where's home? I'll write it down.

AS Six - nine - one.

SS Hold it, six - nine...

AS You just called me before Stuart!

SS What?

AS How did you call me before?

SS I didn't call you before.

AS Yes, you did!

SS No, you called me.

AS No, you called me before.

SS You called me before.

AS And then...and then you were talkin' Sandy...I...mean...

(malfunction in tape)

AS It's not good to keep smoking junk. Stop abusing it.

SS I know. I know. What should I do?

AS Stop abusing it. Get...straighten your head out.

SS I wanna be...alright, what should I do?

AS What should you do?

SS Yeah, who are you?

AS I don't know, who am I?

SS I don't know, what should I do for him?

AS I'm a Fed.

SS What should I do, tell me.

AS (laughs)

SS What should I do?

AS I don't know.

SS What should I do?

AS Go to sleep.

SS No, what should I...this message?

AS Tell David to call me.

SS Where?

AS At my home.

SS Ho...what is it?

AS He knows it.

SS I don't know him.

AS You don't know David?

SS David who?

AS Stolzenber...nothing, nothing, nothing.

SS W...I don't want (inaudible)

S I wanna go to sleep, ok?

SS I do too. What do you want?

AS Ok, Nothing. Goodnight (inaudible).

SS Well (inaudible) Alyce.

(malfunction in tape)

SS Last...last name Alyce?

AS Janet...



SS Smet... Alyce Smet.

AS Used to be Gambeto.

SS Yeah?

AS Yeah.

SS What else?

AS Well, I'm a friend of Rick's. I was with Rick to Woodstock today. Now you remember?

SS You...you were in Woodstock?

AS Yeah, with Rick.

SS With Rick in Woodstock...

AS With your friend Rick.

SS My...my friend Rick...

AS Right.

SS I'm in Woodstock too.

AS T...not...today you aren't...

SS No, I was there yesterday.

AS You were in Fire Island.

SS I was in Fire Island yesterday.

AS Yeah.

SS Now I'm in New York.

AS Right. Now you're in the city, and now Stuart, you're gonna go to Europe, and Stuart...

SS That's right, correct.

AS ...if you're smart, if you're smart, don't take no crystal with you.

SS In not taking any crystal, who are you?

AS (sighs)...

SS Oh where...we're very close together.

AS What?

SS We're very close together. You must be, you must know me.

AS Yes I do.

SS Crystal... 'cause I'm not taking crystal with me, and crystal is a, is a code. Who are you?

AS Crystal is a code. I didn't know it was a code! (laughs)

SS Who...who are you Alyce?

AS Who am I?

SS You! Cause...c...

AS Stuart, you really are so out of it you don't know who I am?

SS No, I don't. I know...and crystal is the code.

AS The code of what?

SS The code of crystal.

AS The code of crystal (laughs)

SS Right. Smoke it.

AS You smoke too much of it.

SS You smoke it.

AS Yeah, I know Stuart.

SS Yes, who are you?

AS But you're smokin' too much of it...Alyce!

SS Alyce...

AS Ok, remember I returned your pipe.

SS What?

AS I returned your pipe...

SS You returned my pipe?

AS ...and you called me up tonight and you wanted me to come over to your house...

SS Yes...

AS ...and I couldn't come over to your house...

SS Yes...

AS Ok?

SS Yes.

AS Now you remember me?

SS No. Where's my house?

AS When was I in your house?

SS Where's my house?

AS On um...35th Street and 3rd.

SS That's...that's where I live.

AS Alright...

SS Where do you live?

AS (incredible)

SS That's right.

AS And you have two different phones..



SS What else?..

AS And you have a bedroom.

SS What else?...

AS And I saw a picture of your little girl on a stone.

SS (inaudible)

AS And you showed me all your pictures of you, in...in...uh different countries.

SS W (inaudible)

AS What?

SS That's right. Where d...who are you?

AS I was at your house the night before you went to Las Vegas.

SS Yes. Who are you Alyce?

AS Now I know you, right?

SS Yes you do.

AS Ok.

SS Who are you?

AS Who am I?

SS Yes.

AS Umm...

SS How come I haven't...how come I don't know you? I know you. How can you know me?

AS How come?...Because I'm a mystery person.

SS Oh Alyce, come on.

AS See...

SS Don't deceive me.

AS No, I'm not (inaudible) no, I'm not kidding you. Not many people know where I live.

SS Tell m...I know who you...

AS That's why I never get busted (inaudible)

SS I know you, but I...you don't know...I know you but you don't know me.

AS No, Stuart, you don't know me.

SS Do you know me?

AS You're right.

SS You know m.

AS You know me too, but I know you better. Ha! ha!

SS Oh you do know me better.

AS (laughs) definitely.

SS Do you do me?

AS What? Did I ever do you?

SS Yes.

AS No, I never did you Stuart.

SS Did I ever do you? No?

AS No, oh, I guess if I didn't do you, you didn't do me.

SS That's obvious. Ohoo.

AS (inaudible) Alright. Ok.

SS Alyce come on. Come and do me.

AS No.

SS Well show me.

AS I'm a, I'm a let you go to sleep, Stuart 'cause I'm very tired. Ok?

SS I'm tired too, but lemme, lemme just get a...

AS (inaudible) Stuart...

SS ...lemme get a peek of you...

AS What?

SS ...I want a get a peek-a-boo-peek of you.

AS Yeah...O..ok. Go to sleep Stu.

SS I wanna see you.

AS Wha, no I can't see you now. I gotta go to sleep.

SS Well how 'm I gonna see you?

AS Well, I'll...maybe I'll come over later. Ok?

SS Well, how...I'm not gonna know who you are?

AS You'll know.

SS How?

AS You'll recognize me.

SS I won't...I won't.

AS You will. You will Stu.



SS I won't.

AS Well, I'll tell you. Ok?

SS I won't.

AS Ok.

SS I'm at...I'm at my house now, my apartment.

AS I know, I know.

SS How do you know?

AS I...because I'm talking to you.

SS You're...well, I'm at my apartment.

AS I know. Ok?

SS W...where are you?

AS In my apartment.

SS Where's your apartment?

AS In...two blocks away from Priesman.

SS From Priesman?

AS Right.

SS I'm not near Priesman.. He's on the west side, and I'm...

AS I know, I know. I live on the west side though.

SS I'm on the east side.

AS (inaudible) east side.

SS Yes. What's your name, Alyce what?

AS Samet.

SS Alyce Samet?

AS Right...

SS Samet...S...spell it.

AS S - A - M - E - T.

SS S - A -, S - A -

AS M -

SS M -

AS E -

SS M -

AS E -  
SS E -  
AS T -  
SS T - Ok. Alyce Samet.  
AS Ok. Goodnight Stuart.  
SS No, don't say goodnight.  
AS Yes, I gotta say goodnight, I gotta.  
SS Why?  
AS (inaudible) 'cause I have to go to sleep.  
SS Is - uh - Joni there?  
AS Is...no...I don't live with Priesman. I have my own place. I live near him.  
SS Samet...  
AS Joni lives with Priesman.  
SS Joni...  
AS I wouldn't live with Priestmann.  
SS I wouldn't either.  
AS Is...that's...s...we g...we got that in common. Now you remember Stuart.  
SS He...he's a (inaudible)  
AS Oh, you'd better believe it.  
SS He's a (inaudible)  
AS I...I am gonna fuck that dude up. (inaudible)  
SS I - I - I would hope you ram up his...up his whatever you can ram up. He he is...  
AS Oh no, I'm gonna have someone do it for me.  
SS He is so bad, he is so bad.  
AS Why don't you like him? Why don't you like...  
SS I hate him. I hate him.  
AS What did...what did he ever do to you?  
SS Oh...he's the worst.  
AS What did he do to you?  
SS He ripped me off.



AS He...he did something worse to me Stuart.

SS Aw I can't believe anything worse to you.

AS Oh, most definitely. He...oh there's only one person that knows what he did to me.

SS Oh he's the worst.

AS But he's gonna get...he's gonna fuck him up for me too.

SS He is the worst. Well, I'd like to meet you.

AS He really fucked me up (inaudible)

SS Because I like...

AS (inaudible) fuck me up & get away with it (inaudible)

SS I li...I...I'd like to meet a person who coul,d uh, have the worst of worst. I can't believe it.

AS Of what?

SS I can't...I can't believe th...that...that there's a worst worst. He did worse.

AS How did he rip you off?

SS He ripped me off because he did things to me that he said he would do, and he didn't do. I can't believe that.

AS Well why...what are you gonna let him get away with it Stuart?

SS He got...

AS Because you're so fucking crystallized, how do you let people get away with things like that?

SS I'm straight now. I'm straight now. I'm straight. Anything that he did crystallized, he did through me. Crystallized...

AS You know why he (inaudible) just fuckin' get away with it. He's nothin'! Who the hell is he?

SS Well, I don't know. He's a schmuck!

AS He's a schmuck!

SS I know. Who are you?

AS So why, so why're you gonna let him get away with it, Stuart?

SS Well, let's get him, let's get him.

AS Who likes him? Who the fuck, I don't know who likes him. Who likes him?

SS Who? No one, no one likes him. Let's get him.

AS So?

SS Let's get him. Ok? You wanna get him?

AS No, I - I wanna fuck him over.

SS You - you and I'll get him.

AS I wanna fuck him over.

SS Ok...you...

AS (inaudible)

SS You and I'll get him, right?

AS What?

SS You and I'll get him, ok?

AS I can't get him personally.

SS No, but you and I'll get him together.

AS Right.

SS Ok.

AS (inaudible)

SS Well, well, well, well, we'll (inaudible) bed.

AS Why is Rick bad?

SS Ok, now...

AS Why is Rick bad?

SS Well, well, we'll pour, we'll pour something in his bed, ok? Gimme your name and I'll pour something in his bed. What's your na...?

AS We'll pour something in his bed?

SS Something, something. We'll think of something. What's th...what's your name?

AS Alyce.

SS Alyce? E - L...

AS A -

SS A?

AS L - Y - C - E.

SS Alright, let me write this down. E - L - keep goin!

AS Y -

SS E - L, E - L - Y...

AS C - E.

SS C - E?

AS Right.



SS C -, C - E.

AS Right.

SS Ok. E - L - Y - C - E?

AS Right, Right.

SS Ok. E - L - Y - C - E, yeah, ok. Go 'head.

AS Ok.

SS What's your last name?

AS I, I gave it to you before, Samet.

SS Samet?

AS Right.

SS S -

AS A - M - E - T, Stuart, Stuart let me go to sleep, I'll talk to you tomorrow morning.

SS You can't (inaudible) I'm, I'm leaving for Europe.

AS Not tomorrow.

SS I'm leaving Friday, but I'm...

AS No, you're leaving Monday.

SS How do you know?

AS Because (inaudible)

SS I'm le...no, I'm leaving Friday, I'm leaving Friday.

AS Are you leaving Friday?

SS I'm leaving Friday for Europe, yes.

AS I thought you were leaving...um...

SS You m...met, you met Joni?

AS Yeah, I know Joni.

SS Joni is the one he's, he's been with the last few days.

AS What?

SS He's been with Joni the last few days. Blonde Joni.

AS She's livin' with Priesman, isn't she?

SS What?

AS She's livin' with Jeffrey.

SS Yes.

AS How could she live with him?

SS I don't know.

AS He is gonna (inaudible) he asked me to live with him too. I laughed

in his face. (laughing)

SS How come that - how come you...?

AS He asks everybody. He didn't even know me. He knew me for three hours...

SS How come...uh...t...he...how come he...ah, how come you and him...

AS Met?

SS ...got together?

AS You wanna know? Because he called me up. I was staying in a hotel when I first came to New York...

SS Yeah?

AS ...and he calls me up and says "do you wanna go fr - go to a party?"

I says "Who are you? He says "A friend of Davids"."

SS Uh huh.

AS So I think that anyone who's a friend of David's is cool.

SS Uh huh.

AS 'Cause I know David from Florida, er, you know.

SS Right.

AS I used to go out with David in Florida...

SS I know David, I know David, sure.

AS Ok?

SS Yeah.

AS So, I went over there, and there was no fuckin' party, and he got me downed out, and turned me outside, and that was cool.

SS Yeah, ok.

AS The next time I went over his place?

SS Yeah.

AS ...when I first moved here. He says "Did you eat dinner?" - I said "No".

He says "Wanna have some steaks?" He says "Do you know how to cook?"

SS Uh huh.

AS I says "Yeah", ok? I went over there and I cooked his dinner.

SS Uh huh.

AS And I did some downs. He gave me too many. He gave me placidyls.



SS Yeah, that's right.

AS Right? And he gave me crystal and (inaudible)

SS That's how it started.

AS (inaudible) you know they don't have crystal, not many people...

SS Right, right, right.

AS I never did crystal before. Smoked crystal...

SS Right.

AS He tried to fuckin' screw me.

SS Alright, what's what's...

AS ...and I'm not into that (inaudible)

SS What's, what's your name? What's your name?

AS I, I don't know. I forgot it.

SS You forgot your name?

AS I don't have a name.

SS Alright, give me your name.

AS Alyce.

SS Alyce?

AS Yeah...

SS Alright, give your name again, I, I'm gonna help you out.

AS I, I'm...

SS Gimme...

AS I'm already helped out.

SS Alright, give me your name.

AS Alyce.

SS Alyce. How do you spell it?

AS A - L - Y - C - E. Stuart!

SS I, I'm get 'em back.

AS Stuart! What?

SS I'm gonna get, I'm a get him. I'm gonna get him back.

AS (laughs)

SS Right Alyce. Go 'head.

AS You don't have to Stuart.

SS A

AS People like that, their time comes.

SS I know, I know, I know.

AS Their time - his time is gonna come.

SS His time is gonna come.

AS If it don't come in six months, I'm gonna help it come.

SS I'm gonna help, I'm gonna come, I'm gonna come back, uh tonight, an  
I'm - I'm gonna m...mess him up, ok?

AS Ok, ok.

SS Gimme, gimme - uh - his name.

AS Stuart, I'll come over your house, ok?

SS Well, I'm not there right now, but I will be in a few minutes.

AS Ok, ok. Bye bye.

SS Alright, gimme his name. No, no, don't...don't say goodbye.

AS I wanna come over your house.

SS Well, I'm not there right now. Gimme the names.

AS Where are you?

SS I'm in...right now, I'm in my house which is 35th Street and Lexington.

AS I know, I know, I know, I know, I know.

SS You don't know, you don't know, you don't know...

AS I know where you live Stuart. I'm not stoned, you are.

SS I...I'm not...you don't know where I live; I live where you - he - he  
used to live.

AS Where who used to live?

SS Where, where Jeffrey used to live.

AS Jeffrey used to live in your house?

SS No, he used to live across the street from me, 35th between Lex...

AS Oh, (inaudible)

SS ...between Lex and, and...

AS (laughing) Now he lives near me.

SS Yeah, ok. Gimme the address.

AS My address?

SS Yeah.

AS Uh, West 23rd Street.

SS Ok, now gimme your name first.

AS I...I'm not giving it to you again Stuart. I gave it to you twenty



times.

SS Well, well, I'm giving...give it to me again. I'm writing you this time.

AS Ok, Alyce.

SS Umm

AS A - L - Y - C - E.

SS Ah, hold it, lemme write it, I'm writing you this time. I'm writing on a piece of paper. Ok, go 'head.

AS A - L -

SS A - L

AS Y -

SS Wh - A - L - Y

AS C - E

SS A - L - Y - C - E

AS Ok.

SS Alyce.

AS Right.

SS A - L - Y - C - E?

AS Right.

SS Go 'head.

AS Samet. S -

SS S -

AS A -

SS A -

AS M -

SS M -

AS E -

SS S - A - M -

SS/AS -E -

AS T -

SS T -

AS Right.

SS Samet.

AS Right.

SS Yes?

AS Ok, that's all.

SS Alyce Samet...

AS Right.

SS Y..you don't make jewelry, do you?

AS What?

SS You don't make jewelry, do you?

AS No, why?

SS I don't know, some people that make jewelry with th - with the last name Samet. Ok?

AS Yeah, those are cousins of mine.

SS Ok.

AS Ok?

SS Alyce Samet. Go 'head. Continue.

AS That't it.

SS Gimme the apartment.

AS 205

SS 2 - 0, 2 - 0 - 5...phone number?

AS 691 -

SS 691 -

AS 9

SS 9 uh

AS 7

SS 9 - 7

AS 7 - 7

SS 7 - go 'head...

AS 7

SS 7. Now letme see if I have this right, now. I have something that looks like, 6 - 7.

AS No.

SS N

AS 6 - 9 - 1

SS Hold it. 6 - 9 - 1



AS 9 - 7

SS Hold it, 6 - 9 - 1

AS Right.

SS 6 - 9 - 1 - 9777

AS Right! Right Stuart! Got it together!

SS 6...691-9777.

AS Right.

SS That's pretty good...

AS Ok?

SS ...671-9777.

AS Right.

SS Alright, where's...what's the address?

AS 2 - 0 - 8.

SS 2 - 0 - 8.

AS West.

SS West.

AS 23rd.

SS West 23rd...go 'head...

AS Street.

SS ...Street.

AS That's all?

SS Ok, let's see what I got here now. I got here...I don't have much.  
S...ummm I got here 6, 671, looks like 6.

AS (laughs) Stuart, Stuart, Stuart.

SS What? 6...

AS Hang up and, an get it together, ok?

SS ...671.

AS Right.

SS 671.

AS Ho, 691-9777.

SS 6, ho, ho, ho, ho, ho, ho, ho, ho.

AS You said a few times. You got it.

SS 691?

AS 97

SS 6 - 9

AS Stuart, Stuart, Stuart, I'll call you back in five minutes. Ok?  
My other phone's ringing.

SS I don't believe you're gonna call me.

AS I will, I will. Or you call me. Ok?

SS Alright.

AS Bye.

SS What is it, 691?

AS Yeah.

SS 9777?

AS R-right, right, that's it.

SS 671-9777.

AS Right, right, right, right, right. Ok?

SS Ok.

AS Bye.

SS Bye.

END OF CONVERSATION

TRANSCRIBED BY SPECIAL AGENT FREDRIC BOFF



SS Hello?

R Stu?

SS Yeah?

R Ricky.

SS O man, how are ya!

R Alright!

SS Good! Are you in town?

R Yeah - Fuck, I called you this morning.

SS O I love ya, where are ya?

R (laughing) I'm in town.

SS Beautiful. I love ya.

R I love you too, I miss ya

SS I miss you to Rick.

R Alot of good things been happenin'

SS Oh I know. Well lemme tell you, I'm -I-I have some good news  
and I have some bad news for ya.

R Yeah!

SS Uh - when I spoke to you last in California....

R Yeah!

SS Ok, and I told ya that it was going to be very very large.

R Yeah....

SS It didn't go down. However I still have for you but nothing  
like what we thought.

R Yeah.

SS But I have for you here. -the guy never came to pick it up  
you know.

R No, I figured I'd be back, I you know I wanted to see  
you (inaudible).

SS Ok Now I have a guy right now who's flying to Chicago tomorrow.

R Uh-huh.

SS And hopefully uh it'll go down. Now, I'm working on it, b-I've been doin' -all I can Rick.

R Yeah I know..

SS I-I've been doin' (inaudible).

R I know, I know what's been goin' on.

SS Ok, I know.

R (inaudible).

SS Ok but I've, I've got for you, you - I sure you spoke to Brian?

R Huh?

SS You spoke to Brian?

R Yeah you know I speak to Harry and everything.

SS Well Harry doesn't know it Brian...

R Yeah I know, Harry's out of the (inaudible).

SS Have you spoken to Brian though?

R Huh?

SS Have you spoken to Brian?

R Yeah, he was even there when I called you that time.

SS No, have you spoken to Brian in the last-in the last two days?

R Not in the last two days....

SS Oh so then you don't know what's going on?

R No.

SS Ok. Well I mean like-.

R Well I got somethin' else anyway.

SS What'd ya got?

R Well I - I'm gonna s-come in an see ya. I gotta see ya.

SS Comin tonight?

R Yes.

SS You gotta come tonight.

R Yes.

SS I'm dyin' for it. When-when you comin?

R Uhh-er-er-er.

SS Ten minutes? Please tell me ten minutes.

R I can't you know.

SS C'mon Rick, how long?

R Maybe in an hour and a half.

SS An hour and a half, I love ya. Just tell me one thing, is it what I



think it is?

R I'll surprise you.

SS Dy - Is it what I think it is?

R I'll surprise you.

SS Will you - just tell me is it what I think it is?

R I'm gonna surprise you.

SS Ricky is it what I think it is?

R I'm gonna surprise you.

SS Ricky is it what I think, is it what you—is it what—is it what—is  
it what they came and showed you? Just tell me that.

R Yeah.

SS Oh I love you. I love you. Ok Rick. I'll see you in an hour  
and a half.

R Alright.

SS Goodbye man.

R Bye-bye.

End of Conversation 10

CONVERSATION TRANSCRIBED BY SPECIAL AGENT BRIAN J. MOONE

Meter 0894  
Tape IN #7.

Brian to Stuart STEINBERG to Ricky

R RICKY SS Stuart STEINBERG  
B BRIAN

SS Hello?

B Hello, Stule?

SS Yeah.

B Brian.

SS How you doing Brian?

B Alright.

SS Ricky's here now.

B O yeah?

SS Yeah.

B Oh?

SS Is that far out?

B Hey..that is too much

SS I know er..Brian's on the phone.

R He is?

SS Yeah. (inaudible) Ricky's here.

B Ok good.

SS Ok, hold on

B Right.

SS I'll let you talk to him first.

R Hello.

B Alright, what's happening?

R Nothing much.

B Nothing much, huh.

R Nawww..

B Ar, that's good. Er, listen, how does he er..strike you?

R (pause) err..

B He's lucid?

R Er?

B Is he all together?

R Yeah, ah good (inaudible) much so



B Hey you know...like he's been giving me the run around a little.

R Oh yeah?

B You know...get his thing together for me...and er...he says that er...  
a man is supposed to be coming in tomorrow with a sample and er...I'm  
still getting the run around on this.

R No kidding?

B Yeah. He said he some bad luck er, batch in Philly.

R Yeah, did he tell you what happened?

B No.

R Oh.

R Er...we just...you know got done talking about it...

B Right.

R And er...(pause) well I guess I'll let him explain it to ya. I also  
wanna see you, you know...for old times sake.

B Yeah, definitely for old times sake.

R Err...

B So, hey, was anybody there when you err...when you went up to the  
place?

R Where?

B You know, at his place tonight. Was anybody else there?

R Err...yeah.

B A girl?

R Yeah.

B Er...was she dressed in white and blue?

R Err...Yes, I believe so.

B Right. ok, was er...was she Susan?

R Yes.

B She was ..huh?

R Yeah.

B Do you know where she was going?

R No.

B You don't have any idea?

R Er...slightly.

B Slightly? Was she going to pick something up?

R From what I gathered.

B Do you know what?

R More or less.

B Was it er..was it er anything you smoke.. is it?

R NNo.

B Something you take?

R Yeah.

B Like pills?

R Err..yea.

B Oh. Do you know if she's gonna be coming back to his place with that?

R Most definitely.

B Most definitely?

R Uh hum.

B Do you know when? What time?

R Amm...

B How about er seven thirty?

R I would say around then.

B How about err..did he mention a time?

R No.

B He didn't?

R I'm waiting.

B Oh, you're waiting?

R Yea.

B Why are you waiting?

R Amm...new..just to say goodbye.

B Oh, cause I hope you weren't gonna do what I thought you were gonna do.

R No, no.

B Oh, all right.

R I don't...I don't even know what it is about. I just wanted to see...

B Right.

R ...If you know what I mean.

B Good. Alright good, fine.

R That's was my interest.



B Alright. That's good. That's good. Did he mention quantity or quantity?

R No, that's why you know I wanted to see ...

B Ok, alright amn..Listen er.. I, I don't think he has an extention to this number so keep on nodding you head and yesing and stuff like and I just gonna split for a second.

R Alright. ok.

B Alright so just keep on talking to me.

R Alright.

B Right.

R A hum..(pause) yes..(pause) ahem...ahem (pause) yea, trip was fine. (pause) enjoyed my trip..yea..yea. (Pause) we camped out along the way...

B Rick?

R Yea.

B Yea, alright, good, you got back together now. So er.. listen, have you seen er our mutual friend?

R Yes I did.

B Ok... And how does he think everything's going?

R Err..which one?

B Err.. well, the little man.

R Oh, he's very happy.

B Good.

R Seems like everything's alright.

B Alright, fine. How was your vacation?

R Very nice. I really enjoyed myself.

B Good, alright, that's good.

R I got nice and burned.

B Are you?

R Yea, I have a nice color.

B Yea.

R I guess I could have gotten the same thing in New York.

B Well, probably, but if you went out to Fire Island, you might have drowned.

R I heard that. When I walked in here they were saying er..there was a girl here by the name of Susan. I don't know if you ever met her..

B Right...

R ..that er..she just left..but she was saying about er some people that drowned out there.

B Right. That's right.

R Yea.

B In the newspaper, one of the biggest undertows they ever had.

R Oh yea.

B Yea. I gonna ask her when she comes back. She's supposed to be back in a little while.

R Right. Err..I gonna ask her.. good...you know..what the heck is with these underturns out there....like a good place to stay away from.

B Oh, I tell ya, I would. I definitely would.

R (laugh)

B Do any fishing while you were away?

R Yea, caught some fish.

B Did ya?

R Yea.

B What did you go for?

R Err..I went for anything.

B Yea.

R I had trouble with my boat.

B Right.

R And err..I really getting a (inaudible) around with this. They been nailing me with bills on it. Finally they got a guy from (inaudible) to fix it. After I paid him bout four hundred and fifty dollars.

B What type do you have?

R I have a Sea Ray.

B A Sea Ray?

R Yea.

B Oh



R And err..anyway the jerk me around and finally...I used it once it once...

B Right.

R ...and err. you know, you can tell (inaudible) from California I came back from Florida.

B Right.

R Ahh..I'm working on some real estate deals. Stue's interested. Wow what a mind blower. I got a big deal together down there...

B Right.

R er..to build four hundred family unit condominium. I have some people interested in putting up the money for it, and Stue's family also is interested. Stue is telling me now that er he would like to take me to Chase Manhattan Bank and introduce me er and put the deal together and become a partner...

B Oh?

R ...if my other people don't go through.

B Right. That's good, that's good.

R I don't know where that's coming from.

B Hey, listen, can I call you tomorrow?

R Err..no.

B No?

R I will be er at the beach.

B Right. You know what time you may be back?

R Err.. tonight?

B Are you going to be home later tonight?

R Err...I'll be around.

B Well are you going to be at er..our err..little man? You know. Our little friends place?

R I'll check in with him.

B Alright. Would ya?

R Yea.

B Arr say maybe around nineish or so.

R Around nine?

B Right.

R All right.

B Can you make that or is that too quick?

R I'm just trying to think because I supposed to meet somebody for dinner. Somebody's cooking me a red snapper.

B Alright listen. Let's put it this way. How about er..is tomorrow night alright or the day after?

R Arr..this seems to be the best.

B Huh?

R This seems err...

B Is she back?

R No.

B Oh, oh.

R Arr..let me see..hold on one second. (pause)..there's supposa to be somebody back err..by Friday.

B By Friday?

R Yea.

B Oh, see, cause he told me Tuesday.

R Yea, well there's been a delay or something like that.

B Oh yea.

R You know?

B Hey, well listen. Why don't you put him back on and I'll be in touch with you. I get you know I'll get to see you no matter what happens.

R Yea, definitely.

B Alright?

R Alright.

B Alright, good.

R Ok, here he is.

B Cood. (pause).

SS Hello?

B How you doing?

SS Ok..how are you?

B Alright, good.

SS Yea.

B Alright listen.

SS Yea.



B Is the guy gonna be there tomorrow or what?

SS Is the guy gonna be there tomorrow?

B Right.

SS What does that mean?

B With the dust. You know. With the crystal.

SS Alright..the guy was here before and err..he gonna go to Chicago.

B Oh, he didn't go yet?

SS No, he said he didn't go yet because..er..I didn't know what Ricky was gonna bring here. You know?

B Right.

SS I thought Ricky maybe was gonna bring it in.

B Right.

SS So I said to him, "Cool it please until we see what Ricky has". He didn't have, have anything. So err.

B Why, why didn't you tell me that?

SS Why didn't I tell you what?

B Tell me that. You told me that the guy already left.

SS Say that again.

B You told me...

SS Yea..

B ...that the guy had already left.

SS Had already left for Chicago?

B Yes.

SS I did not.

B Oh Stui

SS I did not Brian.

B You told me that the sample was gonna be there on Tuesday.

SS No, I did not. I did not tell you that. I did not tell you that.

B You told me...hold it..are you ready for this?

SS I'm ready for this.

B You told me Tuesday the sample and Thursday was gonna be the weight.

SS Ok, he's leaving..he's he's here before..

B Ok.

SS Ok?

B Alright.

SS Alright? And I told him to hold off because Ricky was here and perhaps Ricky would have it and I won't have to have him go to Chicago.

B Ok.

SS I thought Ricky had it.

B Alright.

SS Alright?

B Ok.

SS So now I'm gonna tell him Ricky doesn't have it so I tell him go to Chicago.

B When are you gonna tell him to go?

SS Well, (inaudible) tomorrow.

B Listen.

SS Yeah.

B Do me a favor?

SS Yeah.

B Call the guy right now and say to him..go tomorrow..so I can tell Artie, that I know that you told the guy to go.

SS Ok..well..Stedy..Stedy..can you get off the phone?

(STEDY Can I?)

SS Yeah.

STEDY Yeah, ok.

SS Can you? (pause) skoot that phone over here. (pause) ok..(pause)..busy (laugh), can't help a busy signal.

B Yeah.

SS No (laugh) ok..it's busy..w.wait well (inaudible) he was here and (inaudible) to Chicago.

B Ok

SS And then Rick called and he called, and I said err you know, hey, Ricky's here, maybe you know, don't have to go to Chicago..so I, you know split and er went to meet Ricky and er..that was the story...you know..an Ricky doesn't have it, so err..go to Chicago.

B Alright good. How about I call you back around nine to find out if you got in touch with the guy?



SS If I got in touch with the guy.

B Right. To send him to Chicago.

SS Fine.

B Ok.

SS Fine.

B Alright because we're really interested..

SS I know you're interested. I know you are.

B You know?

SS I know.

B And I mean y, you already told me that you are gonna be going away pretty soon.

SS I know, September first..

B You know.

SS (inaudible) if I'm not here Ricky's here so don't worry about it.

B You know.

SS If I'm not here, Ricky's here.

B Well does Ricky know these people?

SS Don't worry, R, Ricky will be introduced to these people. Ok? I mean Ricky'll be, I mean Ricky and I are like one.

B Well how come you don't want to introduce me to the people?

SS Because, well, because Ricky and I are one (pause) alright?

B You mean..ahh..I don't know. I don't know. Hey listen..do me a favor? Put Rick back on.

SS Sure

B Okay (pause)

R Hello.

B Hey Rick?

R Yea.

B Alright listen..he says to me that he's gonna be calling the guy from.. you know..to send him to Chicago. Ok?

R Ah hu

B While you're there, make sure that he calls the guy for me.

R Yeah..

B Alright, because he's..definitely..you know..like I don't know err..what the story is with him, you know.

R Ah hu

B So I you could do that, you know, just have him..and he say err..  
if err.. nothings gonna be going before er..he goes away on his  
vacation that he's gonna introduce you to those people.

R Yeah.

B You know.

R Well, I had thought I could get something together but I couldn't.

B Right.

R You know?

B Right.

R And err..I'm sorry I came up empty handed..and..I left it in his  
hands.

B Right.

R ...but err.no, I'm sure you know everything'll be smooth..and err.  
he'll get it.

B Yeah. Ok..because I'm trusting you how..to really get him going.

R Yeah.

B Alright.

R Yeah. I see, I see.

B Ok?

R Ah hu..so well..we'll make the call.

B Alright...cause I told him I'm gonna call him back around nine.

R Ah hu..

B ..so hopefully he'll have it done.

B Right, good enough.

B Ok?

R Definitely.

B Alright. Then listen. I'm signing off..ok kid?

R Ok.

B Alright Rick. I'll be seeing you.

R Right. Bye, bye.

B Bye, bye.

END OF CONVERSATION



JA 92

104

Reel 1C #4

Meter 901

David STOLZENBERG outgoing  
to Howard KAYE

DS David STOLZENBERG

HK Howard KAYE

DS Howard?

HK Yeah.

DS David.

HK How are you David? How are you doing?

DS (Coughs.) Uh, I spoke to my people, I can, I can only get "rock".

HK Ya know, that's ok. What I'm saying to you is, I'm not doing it  
for myself.

DS Oh, now I'll, (stops)

HK I know, I know the price you quoted.

DS I, I can't, I spoke to them, and pure, I can't do it for that  
cheap.

HK (background noise) ok.

DS It's uh, it's uh, it's like, it's ninety percent, and the other is  
the binder.HK What can you do it at? Because man I'm not gonna get involved  
because of the new drug law.DS Alright, I'll (inaudible) to ya right now, let me make uh, let me  
correct your (inaudible) cuz I mean it may have made you too hip.

HK That's what it did.

DS Hey, it's not that (inaudible) I, I, I got uh the price is a  
little different to me. You know, I mean uh -

HK Just do the best because I'm gonna have a ton for you to do.

DS (Laughs) Gad.

HK And by the way, you know, I guess you been told that I'm (inaudible).

DS Yeah, I, I, I know (inaudible) the story uh, uh (inaudible)  
sixteen into ten, is uh nine is eight, eight, eight times six is,  
five times six is (inaudible) carry nine, carry the three is  
eight zero two is (inaudible) uh (inaudible) in, in, in all  
fairness to, to me and Stuart because -

HK And to me though, because you . . .

DS Right.

HK You stated something, so go on.

DS Alright, uh, between eight, eight and a half.

HK Ok, can I have uh, I will come by after it about ten-thirty tomorrow.

DS Alright now, (stutters) I'm, I'm getting the package on Friday.

HK Must be done on that.

DS Alright, and that (stutters) and you, it'll be tasted on the spot. Right at, you know right there.

HK No problem.

DS Put the thing down and you like it you take it.

HK No problem.

DS That's, that's the only kosher way to do it. You like it and you take it.

HK David, Stuie will tell ya (blocked)

DS I can give ya "rock" ya know, like and you'll love the "rock" and uh the "rock" don't match the package. Ya know -

HK I'm hip to that. (Blocked by David) Davey I'm, Davey I've been in the, it before.

DS I'm hip. I'm hip ya know.

HK Ya know, I'm -

DS That's the way I like to do it. (stutters) I'll open a bag, you scoop out, ya look at it, you like, I'll weigh out a "Z".

HK Can it be done early Friday?

DS Uh.

HK Got to be.

DS Let me see.

HK I may have about, quite a few for ya by then.

DS Uh, Friday I'll have about, about a eight to a half of, of a,

HK I might, I may only have one, but I may have quite a few more.

DS I'm tellin ya what will be, about a quarter - key I think I'll have -

HK Yeah.

DS I'll be sitting with -

HK But no matter what, what time Friday can I expect it?

DS Uh, let me go through the book here. We have an appointment book. I would say uh ten, eleven, twelve, noon.



HK No later. Not -

DS Alright noon, noon will be perfect for me.

HK Ok, no, no kind of mess-ups or anything.

DS Uh.

HK You know what I mean. It can't be -

DS I, I would like to confirm it with you tomorrow morning or late tonight.

HK Not at, no. Tomorrow morning.

DS Tomorrow morning I would like to confirm it with you.

HK Ok.

DS Alright.

HK Yeah, I'm in the office now, cause.

DS Right.

HK (blocked)

DS Either Stuart or I will, will, give ya a ding-a-ling on a confirmation.

HK Ok, now, we'll have it for a couple of, ya think for a few.

DS What do ya mean a few?

HK Few days.

DS Uh, I don't understand.

HK I maybe able to do quite a number with you.

DS Well, uh, there's, there's more. Ya know. There's always more where it came from. I mean like, uh, it only takes the guy a certain amount of time to go where he has to go to pick up ah, a fresh package ya know. Well you know where it is, where it comes from and come back with it. That's no problem, and I'm sure there'll be, there'll be excess. Cuz I'm doin (stutters) a couple other small things and wh....

HK Do it, do it, are you ready for this?

DS Uh-huh

HK Do it at eight and we'll start with two as a minimum.

DS S-S-S-six

HK Did ya hear me?

DS Yeah, I'm uh -

HK That just doubled it.

DS Yeah, that's, that's together.

HK Ok.

DS Yeah.

HK Uh, twelve Friday, though gotta be. Ok.

DS Right.

HK Ok, alright.

DS Yeah.

HK Ya don't think it will be a mess up now?

DS Uh, no.

HK I know the game. It can happen but -

DS No, I, I was with my people all day today, and the package ..

HK Is it alright if Stuie comes up to see me and ya know, I, I don't want unless you feel you're completely (inaudible)

DS I can send Stuie there and you can do it in the office.

HK (Blocked) now, I don't mind seeing ya under any other condition you know that.

DS Stuart can put a suit on and come up to your office.

HK Ok, good, because my wife would be ya know....

DS He'll put his dungarees on and come up to your office.

HK No, no, it won't even be done there because (blocked)

DS Well, wherever, in a restaurant, in a bar, in a toilet, or a subway

HK (Blocked) worrying (blocked)

DS Whatever, this is, this is . . .

HK But it must be there, now, we'll confirm it tomorrow.

DS Right.

HK Ok.

DS Right.

HK In other words though, you think it's as good as, like, you know, tops. Right?

DS Pardon?

HK You think it's really good?

DS Oh yeah, it's, it's the right thing.

HK Ok kid.

DS Uh, you know, it's, it's a ninety percent plus the binder. It always had a binder.



EXHIBIT 1C4

JA 96

5

HK (Garbled) two is there. Good-bye honey.

DS Alright, bye bye.

HK Ok, so what, I'll speak to you by twelve tomorrow.

DS Right.

HK Good bye.

DS You're on, bye, bye.

CONVERSATION TERMINATED

TRANSCRIBED BY S/A J. R. BARRETT

103

Reel 1D #3

Time 1223

Outgoing call from Stuart STEINBERG to H. KAYE

Meter 1275

7/26/73

SS Stuart Steinberg

HK Howard Kay

UF Unidentified Female

SF Stan Feinberg

UF Kaye Group. Good afternoon.

SS Howard Kaye, please.

UF Thank you.

SF Hello, Feinberg.

SS Uh, Stan, this is Stuart. Is Howard there?

SF Yeah. He's on another phone. Do you want to hold on?

SS Well, tell him it's very important that I talk to him.

SF He's going right off. Hold on a second.

(in background) Should I tell him to hold on, Howie?

SS Tell Howard that I can't play games with him. That if he wants to talk to me, talk to me now.

SF Hold on a second.

HK Yes, Stuart.

SS Howard, I can't play games. You want to talk to me, talk to me.

HK I just - Stuart.

SS Howie?

HK I don't plan to game. So let me call you back.

SS Well, I'm leaving.

HK Both lines are busy.

SS Howard, what kinds, Howard. I'm playing any games. You want to talk to me, you have to talk to me now. I have to leave here.

HK My father is in Florida. I'm calling you right back.

SS Howard, I'm leaving this minute. Do you want to talk to me or not?

HK (garbled in with SS conversation) In other words, you can't.

SS I told you I can't do it. There anything else you want to talk to me about?



HK No, I'd like to talk to Davey.

SS No, you can't talk to him.

HK In other words, he can't call me.

SS Well, what's the point, he can't do it. I was with David last night until six-thirty in the morning. What are you gonna -

HK I don't believe it could ever happened then.

SS What could ever happen?

HK I, I never heard figures like that ever before in my life. I'm, I'm berserk with this. Do you know what I did?

SS Howard, I'm doing fifty pounds. What do you want from me?

HK You are, huh?

SS Yeah.

HK You ain't gonna get it in New York.

SS I know I'm not.

HK But I can get it for you if you want it. Alright?

SS How?

HK Are you interested?

SS Howard.

HK I can get it for you! Are you interested?

SS I'm interested. Its' gotta be the right thing. And its' gotta be -

HK It's the right thing, but its' gotta be a trip, okay?

SS I don't care what it is, Howard.

HK Well, I'll get it in California for you in fifteen minutes.

SS Howard, I don't care what it is. It has to be fifty pounds.

HK Do you know what you're talking about?

SS Howard, I know what I'm talking about! And I'll tell you the price I'm talking about.

HK What?

SS Okay.

HK But Stue, I have to know that you're coherent.

SS Howard, am I not coherent?

HK You wait five minutes then -

SS Howard -

HK I'll cut for you.

SS Howard, I know what the price is. I don't have to wait. I'll tell you right now what we can pay.

HK What?

SS Six hundred & eighty thousand for fifty pounds.

HK In cash?

SS In cash!

HK Fif - fif

SS Fifty pounds, six hundred and eighty thousand. Tell me you can do it, or you can't do it. That's all.

HK When? How? Where can I reach you?

SS I'll be back in a half an hour.

HK Call me.

SS You call me in a half an hour here.

HK I can speak to you definitely.

SS Howard, in a half an hour call me at my apartment.

HK Good-bye, good-bye.

Conversation terminated.

Transcribed by Special Agent Fred Eoff.



JA 100

USA 50-42  
(FD-420-11)

GOVERNMENT'S  
EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

1D4

R/E

Reel 1D #4  
July 26, 1973  
13:01 hrs  
Meter 1273

Outgoing call from Stuart STEINBERG to Howard KAYE.

SS Stuart Steinberg  
HK Howard Kay  
UP Unidentified female

UP Kaye Group. Good afternoon.

SS Howard Kaye, please.

UP Thank you.

HK Hello.

SS Howard?

HK Yes.

SS Stuart.

HK Yes, Stuart.

SS I'm waiting for your call. It's been half an hour.

HK I'm here Stuart, I'm here. I'm sorry Stuart, but I'm working Stuart.

SS You tell me a half hour.

HK Go ahead. I got two people calling back who are calling back who can do it.

SS Okay, I'm here.

HK Uh, Stuart.

SS Yeah.

HK Now how much you say, you said six what?

SS I said what?

HK Uh, da the money!

SS Six hundred and eighty is the price they will pay. We shouldn't have to pay more than five hundred.

HK Stupid, tell your fucking friend that those days are over, man.

SS Howard for that kind of quantity - - -

HK You don't understand. What I'm paying for tops - what I use to pay for.

SS Howard, think about fifty pounds and think what you're talking about. Fifty pounds is a large quantity.

HK Yeah, he'll fly out to the coast.

SS Who?

HK I'll tell you who. He'll fly to the coast, right.

SS I don't care, Howard.

HK I'll tell you who, who it is so you won't worry. A kid like Harv.

SS I don't care who'll fly. I don't care who'll do what, Howard.

There're people here who'll pay six hundred and eighty. They'll pay seven fifty if they have to. Just make it the right thing. Okay, we shouldn't have to pay more than half a million. We really shouldn't.

HK Stuie?

SS What?

HK That comes to ten thousand, and -

SS I know what it comes to, Howard. I know all the figures, Howard.

HK You see Stuie, I could put it together in two minutes in Frisco but then you'd -

SS Howie, I don't care how -

HK Then you're dealing -

SS Howie, I don't care, <sup>how you</sup> do it. Howie, I don't want to hear anything.

HK But you don't understand one thing.

SS Go ahead. So do twenty-five pounds, Howard.

HK You're fucking in with people with, the machine guns.

SS No machine guns.

HK I know. No machine guns!

SS Who has machine guns? The people with the money?

HK No, the people with these kind of -

SS Well, I don't care. I don't want to know from machine guns, Howard.

HK Stuie!

SS My people don't have machine guns.

HK Stuie, Dave will explain to you. I don't know why you haven't talked to him. I don't care about a fucking -

SS I've talked to him. He's been here the last four days.

HK Uh (stutter) I don't give a fuck if your people don't have machine guns.

SS Why should they?

HK It'd go smoothly. Why? Cause when you talk - Stuie - try to communicate with me. Okay?

SS Go ahead.

HK For these things to go smoothly -



SS Yeah?! Howard, my people have done this before and do it, they do it in the bank with the money, Howard. In a safe deposit box in a vault. I've seen the money. What's the problem?

HK I understand that.

SS Okay, and the place that it will take - being taking place in -

HK I don't want to know from nothing.

SS You don't have to know, and these people have been there. I've seen them. They've met me and there's no problem. So why should there be a problem with you and your people?

HK There shouldn't be.

SS Okay, fine.

HK As long as - I'll give you a little secret, okay?

SS Okay.

HK It doesn't keep spreading around when people call me up and say Stuie made a half a million dollars. Your name is known baby. And when your name is known, there are pros in this business who come and blow your apartment up. And I'll introduce you to a hundred of them. Stuie, I've been dealing in the street much differently than you for the last two years. Alright, I'll have Stuie - what I'm to say to you is, you're playing in a dangerous game.

SS Who's, who's rumoring a half a million dollars?

HK All over the street.

SS Who told you? Give me a name or two.

HK Uh. Your whole crowd and I don't have to go any -

SS Who? Bonnie Stone?

HK Big Stu, uh, Big Sue.

SS They don't know. They haven't seen it. It's not true.

HK So, so that - meanwhile they heard it.

SS Whadda you mean, they heard it?

HK Where'd they hear it?

SS I don't know where they heard it.

HK Stuie, I'm not arguing. Listen -

SS I don't, I don't know how, Howard, I don't know where they heard it.

HK Stuie, I'm talking to you very -

SS I'm talking to you straight, Howard. These are crazy people. Do I know.

HK Stuie, they have as much as they would pay up to - um - six - eighty, right? When you lay half a million, baby, and I'm middle -

SS Howard, that's what it should cost. Howard, it should cost us a half a million. That's what it should cost -

HK Un - un , because I ain't got room. I want, I want room, big, I like nice room here.

SS Howard, you don't want to do the deal, don't do the deal.

HK Saying I can do it for you -

SS Howard (garbled). Howard, listen to me. The deal was going to be done. Okay.

HK Yeah.

SS For, for that or crystal, either one. It was going to be done for six hundred and eight is what they wanted to pay for either one of the two.

HK I have it.

SS In the pure form. If you can do either one of the two things -

HK (garbled) have an open Peruvian connection.

SS Howard, listen to me. If you can do, I don't care who or what you got, Howard. I don't care. I don't want to know. Are you listening to me?

HK You've got to talk to me about this (garbled)

SS What?

HK You gotta do me a favor.

SS What?

HK I gotta talk to Davey.

SS Why?

HK He's gotta come in some involvement so he'll understand us.

SS Why does he understand anything.

HK Because, uh, what happens -

SS Leave him out of it.

HK Once, one place -

SS Leave him out of it, Howard.

HK You gotta understand something.

SS What?

HK The money sits one place.

SS I know that. We're doing it that way.

HK (garbled)

SS What?

HK Who's? Are you gonna pick it up?



SS No?

HK That's - who's going? Your - strange people?

SS Howard, I know all the people.

HK I don't give a shit if you know 'em.

SS Who's gonna pick up what, where? It's gonna be done here in New York.

HK It's gonna be done in either way.

SS No, it's gotta be done here in New York. If you can't do it in New York, forget the whole thing, okay. David knows that. It's gotta be done here in New York. My people know it. David knows it. You're the only one who doesn't seem to know anything.

HK Davey knows it?

SS Yes.

HK How does he know? Where did he get it?

SS He doesn't have it.

HK But how about that. I got two people who can get it -

SS Fine. It'll be done in -

HK (garbled)

SS Howard, in New York or it's not gonna be done. Okay?

HK Except for one thing.

SS What?

HK It have - there's a Peruvian connection on -

SS I understand that.

HK On the coast, and they - ah -

SS Still, let them get in here or you won't want to get in here. My people don't want to go to the coast cause they don't want to get it here.

HK You show me that the money is in -

SS Howard, do you want to see the money in the vault? I saw the money.

HK Uhm - ah.

SS What's your problem?

HK Yeah, I'll probably have to.

SS Why? I saw it. Isn't my word good enough to you?

HK I don't want to be killed.

SS Howard, I saw the money in cash.

HK I don't care if you - ah - ya the pope did.

SS Howard, I saw it. If you want -

HK Sure you did?

6

SS I don't want to introduce you to them Howard.

HK I want to. Then, then just show -

SS Howard, I saw, Howard they have a million dollars in cash in a vault. I counted it with my eyes.

HK Stule, let me tell you a little secret. Okay?

SS What?

HK I don't care if the pope did. I don't want to be killed.

SS Howard, if you don't want to deal, then don't do it. Okay?  
That's the deal. I told you the figures.

HK (garbled) call back from a guy.

SS I don't care who you're waiting for.

HK If you now don't care then I won't do it.

SS Howie, I just hope that -

HK (garbled)

SS Howard, I just told you all the information. What else do you want from me?

HK (garbled) call back. I missed the call (garbled)

SS Fine.

HK (garbled) tomorrow.

SS Howard, fine. Do whatever you can do it man.

HK Okay.

SS What else do you want to know?

HK What do I want to know?

SS Yeah, what?

HK There could be no fuck ups on your end.

SS Why can there be, Howard?

HK Why?

SS I just told you.

HK So you know the people, okay.

SS Howard!

HK Well, just listen to me!

SS Go ahead.

HK They've made this much money, honey?

SS They've made this much. They have this much.

HK They're nothing but darling gentlemen.

SS That's right.

HK Stule?



SS You don't even know the people, Howard.

HK I don't give a fuck who they are. You don't make that kinda money and be darling gentlemen. Okay?

SS Howie! What kind of money? They're only buying this stuff Howard. They're only buying it. They have money. They have a million dollars. They have two million dollars.

HK They're street men, Scufe.

SS What?

HK They're street men.

SS They're bus - No, they work - Howard, okay, you want to know who they are? The guy owns a business here in New York. He's a very honest businessman.

HK I insure a Trust Company that's owned by Joseph Colombo.

SS Howard, I don't care. What's not the people. This man, okay.

HK (garbled)

SS Howard, this man lives here in New York. He has the money in a safe deposit box. I know him.

HK I'm going. I'll get back to you in fift - soon as I get the (garbled)

SS Good-bye.

HK Good-bye.

CONVERSATION TERMINATED

TRANSCRIBED BY SPECIAL AGENT FREDRIC BOFF

RE SA 107

UFA 23-476  
(L.D. 4-23-71)

GOVERNMENT'S

EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

2E7

70-20-5-2-75-107-0700

Reel 2E #7  
Time 1233  
Meter 0782

Outgoing call Stuart STEINBERG to Howard KAYE

SS - Stuart STEINBERG  
HK - Howard KAYE

SS Howard Kaye

SS Howard

HK Yes

SS Stuart

HK stuart

SS Yes

HK What's happening

SS I'm asking you.

HK Nothing. Nothing in the world.

SS What do you mean nothing?

HK Nothing. Nothing I can't do that

SS You can't do anything.

HK Right

SS Anything for any amount for any quantity for anything.

HK No.

SS How come.

HK Can't do it

SS Why?

HK Where are you?

SS Home.

HK Can I call you in a few minutes. I'll tell you why.

SS Why can't you call (inaudible).

HK Because I'm in the middle of a meeting, Stuart.

SS Call me back Howard.

HK You're home, right?

SS 268 (inaudible)

HK I will.

SS Okny. Bye.

HK Bye.



Reel 21 #8 July 31, 1973  
Time 2030  
Meter 1273

Incoming Howard KAYE to Stuart STEINBERG

H - HOWARD

SS - Stuart STEINBERG

SS Hello.

H Hello.

SS Yeah.

H How are you doing?

SS Okay, Howard, how are you man?

H Okay (inaudible)

SS A, I've been better, better then when

H Never mind a couple days ago.

SS Ha, I was fine a couple days ago, Howard.

H I wasn't making sense, it doesn't make sense to you.

SS What to deal.

H Yeah.

SS Well, don't say it doesn't make sense, I mean I'm, I'm  
working on very big deal, I've done a very big deal already.  
Howard.

H Okay.

SS So don't say it doesn't make sense, I mean you know I'm making  
a lot of money and I can use it, what can I tell you, I'm not  
working. So how can you tell me it don't make sense.

H Be careful.

SS I'm always careful.

H (Inaudible) the right people.

SS What?

H I will get you the right people for to, to protection - end.

SS I don't need protection, Howard.

H Yeah, okay.

SS I mean the people I doing business with, I've done it all  
along with them, they're not Mafia people or anything, they're  
just normal business people.

USA SD - NY  
(ED. 6-22-73)

GOVERNMENT'S  
EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

218

FD-302 (Rev. 5-22-64)

H I know, I know, I

SS I know very well I've know them for four years, Howard, I've been this crystal thing now and my and made \$35,000 dollars with him, come on

H Uhm.

SS I mean really don't tell my business, I know what I'm doing.

H Okay, Stu, do you got Jimmy's number?

SS He's not home, man.

H Do you know where he is?

SS No. I spoke to him, I was with him all day today and I spoke to him, a hum, and he called me an hour ago.

H What's his number at home.

SS He's not at there, no home (inaudible) home.

H 4 number 42

SS What home?

H Where does he live out of?

SS Well, he's, he did live at a house in upstate New York.

H (Inaudible)

SS He's floating.

H He

SS I don't have that number any more. I, I was looking for it myself, I don't have it any more.

H Oh man.

SS I was with him today. We went out with France (inaudible) so I was with him all day today. They're working on some deal he, I and she and a, I was with him today, and I spoke to him about an hour ago and

H You don't have any idea at all where he is?

SS No, I, I can't think of the guy's name he, he stayed with, Howie, Howie Schults.

H Schults

SS Call it up, call information.

H I can't find Schults number.

SS Call information, Howie Schults.

H I wouldn't know how spell it.



SS Schultz, I guess, Schult n or z, Schultz, it can only  
be one of those, Schultz or z, okay.

H His number for 3 days.

SS Howie Schultz and it's in East 60's I believe.

H Yeah I know.

SS Okay and do me a favor. If you get Parker tell him to  
call me, it's very important.

H Okay.

SS Please.

H Yep.

SS When will I see you, Howard?

H I'm

SS By the (inaudible) Vegas are you.

H Yeah, we're going to meet you there.

SS Oh, where will go, where will you stay.

H We-- Well now we're going to L.A. like the 12th and I'm going  
to fly him till the 15th and 16th and then I'm going to split.

SS Oh, wait a second. How (inaudible) we're seeing the show the  
17th, you don't want to see it?

H On the 17th.

SS Friday night is when we're seeing the show, the 17th.

H Whenever you say.

SS The show, the show we're seeing is 17th, the midnight show of  
Elvis, the 17th at the International. I've already taken care  
of it all ready, front, front row center. There will be about  
17 of us.

H (inaudible)

SS No he didn't tell me that.

H Yeah, they're coming.

SS So there be 19 of us, okay, fine.

H And we, we will be out in the coast.

SS Well where you gonna stay, what hotel in Vegas?

H I don't know the International, take care of that I'm sure.

SS Okay, the International will just call me, I will, you know  
where I'll be, I will be at the Dunes.

H Okay, were

SS I will be there Wednesday the 15th and we're seeing the show  
Friday the 17th, so just keep it in mind.

EXHIBIT 218 JA 111

H Well that's fine, what I'm going to do is fly it for two days and get out of there.

SS Oh that's cool, whatever you want to do but just make sure that you're there for the show the 17th, Friday night. I got a lot of people coming. It would be very nice sit will have a lot of fun.

H Okay.

SS All right.

H Okay, I'm just tell you one thing.

SS Yeah,

H The crystal thing is cool, okay?

SS Yeah.

H The other thing.

SS Yeah.

H Torturous Stuart, they're crazy people involved in

SS Well, okay, fine, the people who are buying thou, Howard are same people who buy the crystal from me, buy the coke from me if I can

H (Inaudible)

SS get the coke, I can't get it, that's all I mean, I don't care.

H It can be (inaudible) I'll tell ya the truth all right.

SS Yeah.

\* H It can be gotten in 100 places so it would be insanity right now with what's happen

SS Well, okay then, fine, then don't do it Howard if

H Like a got a doubling and a parting and my whole thing.

SS So whatever, Howard, we have other people on it as you know. David's working on it, but he's helping me get 5 pounds. Ya know.

H Well you just I'll ask you a question.

SS Yeah.

\* H I don't want nothing to do with it.

SS Yeah.

H You just want to meet people.

SS What?

H Ya just like to meet people.

SS Would I like to.



H Yeah.

SS What for?

H Just to meet the people who do it then I walk away.

SS I don't want to meet them no if they, I don't wanta meet them if you tell me they're bad people, I don't want to know them.

H They're not is what I'm saying, but what happens is if a outside party ever hears about it there crazy.

SS Who's gonna hear about it? Howard, I got, I'll have the cash here. There's no problem, man, I have the cash here up to a million dollars in cash. What's the problem, okay?

H Put it in the bank and make a 100,000 a year.

SS What?

H You should put it in a bank and make 100,000 a year.

SS I don't have the million, the people who want the stuff have the million. Okay, it's not my money. I'm only the middle man. I'll will do anything up to 50 pounds of either one of the two things or anything else for that matter. I'm doing a big deal with them now of qualude, tuinals, seconals. David has put that together for me.

H That's a big one.

SS They're buying anything they can get there.

H What kind of price they getting for that?

SS Well, I paying, I paid 50 and I, I, they're paying 75.

H (Howard whistles)

SS Howard, I can do anything you can get your hands on, any kind of quantities up to a million dollars, okay? So if you can get me anything before I leave, I'm leaving September first for Sweden, if you can get me anything between now and September first, you're in. I'll cut you in half with me.

H No thank you.

SS Okay, you don't want to do it, fine, whatever, okay.

H (Inaudible) we hope everything (inaudible) when we come back it's over and we (inaudible) what the hell for.

SS Well whatever, you know, you're working.

H My bread is going to be too heavy.

SS Whatever, you know, I mean I've been doing this thing and I've been taking a lot of money and I'm getting my thing.

H Be careful.

SS Well, I understand Howard, That's, that's

H (Inaudible) It's not done out of this place.

SS Which place?

H Where you are.

SS No, of course not, Howard.

H Be careful.

SS It's not done out of here, that's why I'm leaving  
September first for Sweden, I want to be out of the  
country.

H (Inaudible) people.

SS Howard, I know it, don't worry about it. I'm very cautious  
and I'm very careful, and I'm very cool. Don't worry, let  
me get off. I, I mess, do me a favor, never call me on  
this phone. I keep telling you that. Why do you keep  
doing it?

H Stuart, they don't do enough.

SS That isn't the point, Howard, my people, my friends have  
this number. They don't have the other number.

H (Inaudible) call, okay, I must talk to

SS Howard (Inaudible) not going to call me, he spoke to me  
tonight. I must talk, talk to him. Are you going to  
call him at Phyllis's.

H (Inaudible)

SS I just told you, call information.

H I called 20 times. They just can't find the listing.

SS Okay, then I'll tell

H (Inaudible) even upstate, I can't, nobody there

SS I know, nobody's there. They don't (Inaudible) house anymore.  
I told you that the house is over, okay, why don't you  
listen to me.

H A ha, okay.

SS All right now, I'm, I'm mean, I'm close to Jimmy, man. I  
know what he's doing, I know where he is. If you would  
listen to me, I would of told ya that the house is  
closed up there.

H (Inaudible) the other day.



SS Well.

H 363 number that was

SS What?

H He gave me a 363 number once.

SS I don't know, Howard, man, I don't know.

H (Inaudible) another number that he (inaudible) 437.

SS I'll tell you who you can get Schultz' number from.

H Shoot.

SS Okay, what's his name, Mitchell (inaudible) friend Mitchell, he'll give you his last name, he's married, has a wife, they were up there when I was there this week-end.

H (Inaudible) I don't

SS Mitchell what's the fuck his last name, he's in the record business. He got me 20 record albums.

H (Inaudible) the 1 from Warner Brothers.

SS Yeah, right, what's his last name?

H (Inaudible)

SS They live in the city, well that the guy who knows, who knows where Parker is at Schultz. Mitchell, I can't think of his last name.

H (Inaudible) Schultz, Schultz left me his number, I just

SS Mitchell shit. Mitchell, Mitchell, Mitchell, Mitchell, Mitch, Mitch, Mitch, what the hell is his last name. I can't think of his last name, Howard. Joanie knows it but I don't, I don't even want to call her and ask her.

H Ha.

SS I said Joanie knows it but I don't even want to call her and ask

H (Inaudible)

SS her, okay, that's where that's at.

H (Inaudible) reach him.

SS She knows his name.

H (Inaudible) talk to him.

SS I don't want to her though, okay, okay, I'll speak to ya later. Good bye.

H Okay, Good-bye.

Conversation transcribed by S/A Maher.

STEINBERG'S REQUESTS TO CHARGE JA 115  
NOS. 14(a), 14(b), 39(b)

Request No. 14(a)

In determining whether Steinberg acted knowingly and intentionally, it is relevant for you to consider Steinberg's mental and physical condition during the period of time he is alleged to have committed the acts charged. If you find that Steinberg was under the influence of drugs at the time of any acts or during any conversation (either in person or by telephone), you would be justified in concluding that there was a reasonable doubt as to whether Steinberg acted or spoke knowingly and intentionally..

Womack v. United States, 336 F. 2d 959 (D. C. Cir. 1964); Heideman v. United States, 259 F. 2d 943 (D.C. Cir. 1958), cert. den., 359 U.S. 959 (1959); People v. Orr, 43 App. Div. 2d 836, 350 N.Y. Supp. 2d 750 (2d Dept. 1974).

Request No. 14(b)

Indeed, Steinberg must be acquitted unless you find beyond a reasonable doubt that his mind was lucid and unaffected by drugs such that he was capable of forming the requisite specific intent during the periods of time relevant to the charges herein.

Allen v. United States, 239 F. 2d 172 (6th Cir. 1957); Edwards v. United States, 172 F. 2d 384 (D.C. Cir. 1949).



Request No. 39(b)

You may also consider, on the issue of the degree of Government participation, the condition of Stuart Steinberg's mind--ie., whether he was more than reasonably susceptible to Government suggestions, or whether he was in a hypnotic state or some other less than normal emotional condition--at the time of his dealings with Agents Noone and Anderson.

## HOWARD KAYE'S REQUEST TO CHARGE NO. 14

Request 14

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

Thus, even if you find that defendant Kaye was a member of the conspiracy charged in the indictment you must nevertheless find him not guilty if you find that by reason of a mental disease or defect he lacks substantial capacity to conform his conduct to the requirements of law.

United States v. Freeman, 357 F. 2d 606 (2d Cir. 1966).



SUPPLEMENTAL REQUEST NO. 2

Entrapment

MEM:nc  
n-766

The defendant Steinberg seeks to avoid conviction upon the grounds that the transactions in this case were induced by Government employees. In short, he advances a defense which the law terms entrapment.

Now, let us consider this plea. Law enforcement officials in their efforts to enforce the criminal laws and to apprehend those engaged in criminal laws and to apprehend those engaged in criminal activities, may resort to traps, decoys, deception and may also use informers. Artifices or stratagems may also be employed to catch those engaged in criminal enterprises. The nature of some types of crime, carried out in great secrecy and deviousness, is such that the wary criminal can rarely be detected unless such methods are used by law enforcement officers. Such methods are not in any way forbidden by law and are often necessary in the detection and prosecution of certain crimes.

Whether or not you personally agree with the policy of using such methods is not in issue and is not before you. The fact that Government officials or employees merely afford opportunities or facilities to one who is ready and willing to violate the law when the

EM:nc  
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SUPPLEMENTAL REQUEST NO. 2 (Continued) -2

Entrapment

opportunity presents itself does not constitute entrapment.

When, for example, the Government has reasonable grounds for believing that a person is engaged in the illicit sale of narcotics, it is not unlawful entrapment for a Government agent to pretend to be someone else and to offer, directly or through an informer or other decoy, to purchase narcotics from such suspected person.

However, in their efforts to enforce the laws, the Government officials or employees may not entrap an innocent person who, except for the Government's inducement, would not engage in the criminal conduct charged.

Thus, if the criminal design originates with Government officers or employees, and they implant in the mind of an otherwise innocent person the disposition to commit the crime charged and to induce its commission, the prosecution may not succeed.

In short, entrapment occurs only when the criminal conduct was the product of the creative activity of law enforcement officials; that is, if they initiate, incite, induce, persuade or lure an otherwise innocent person to commit a crime or to engage in criminal conduct.



BM:nc  
-768

SUPPLEMENTAL REQUEST NO. 2 (continued) -3

Entrapment

And if that occurs, the Government may not avail itself of the fruits of those instigating activities.

Such conduct offends the public conscience, and so, while the crime may have been committed, the Government is estopped from benefiting by the improper conduct of its own officers or employees.

Here, the defendant contends he was free of any criminal purpose to deal in drug transactions and that he had no previous disposition, intent or purpose to engage in such criminal activity but was induced to engage in the conduct charged against him by the creative activity of Government officials or employees.

The Government denies this and contends that the defendant was merely afforded the opportunity on each occasion to commit the offense and that he readily and willingly responded thereto and engaged in each transaction which is the subject of the three counts of the indictment without inducement of any kind.

In this case, Agent Noone is a Government agent or employee. If you find some evidence that a Government agent, by initiating the illegal conduct, induced the defendant to engage in such conduct, then

SUPPLEMENTAL REQUEST NO. 2 (Continued)

-4

Entrapment

the Government must prove beyond a reasonable doubt that the inducement was not the cause of the crime -- that is, that the defendant was ready and willing to commit the crime without any persuasion.

To sustain its burden of proof, the Government has to satisfy you that in fact its agents have not seduced an innocent person but that the inducement which brought about the offense charged against the defendant was but another instance of the kind of conduct which he was prepared to engage in, if given an opportunity.

Adapted from charge of  
Judge Weinfeld in United  
States v. Pignatello, 72  
Cr. 364 at pp. 325-326 of  
the record.

MEM:nc  
p-768



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UNITED STATES OF AMERICA

VERSUS

73 Crim 1095

STUART STEINBERG et al.,

Defendants

New York, N. Y.

January 29, 1975 - 9:30 a.m.

CHARGE OF THE COURT

THE COURT: (Ward, D. J.) It is the custom in this Court for the juror seated in the first seat to serve as the foreman or forelady of the jury. In this case, your foreman will be Mr. John Gutierrez.

Mr. Foreman, ladies and gentlemen:

We come now to that stage of the case where you and I do our part in the administration of justice in this case.

You are the sole and exclusive judges of the facts. It is your function to pass upon the weight of the evidence; you determine the credibility of the witnesses; you resolve such conflicts as there may be in the evidence; and you draw such reasonable inferences as may be warranted by the testimony elicited on direct and cross-examination and the exhibits in the case.

My function is to instruct you as to the law applicable to the case. It is your duty to accept the law

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2 as I give it to you in these instructions and to apply it to  
3 the facts as you find them.

4 With respect to any fact matter, it is your recol-  
5 lection and yours alone that governs. Anything that counsel,  
6 either for the Government or the defendants, may have said in  
7 respect to matters in evidence or as to any factual matter,  
8 whether stated in a question, in argument or in summation, is  
9 not to be substituted for your own independent recollection.

10 So, too, anything I may have said during the trial  
11 or may refer to during the course of these instructions as to  
12 any matter in evidence or as to any factual matter is not to  
13 be taken in lieu of your own recollection.

14 To repeat, it is your recollection, individually and  
15 collectively, which governs.

16 From time to time, conferences at the bench were  
17 conducted during the trial at the request of the attorneys or  
18 at my request. These conferences were solely on questions  
19 of law or logistics and are of no concern to you. You are not  
20 to draw any inference for or against either side because of  
21 a request for such conferences.

22 After you have retired to the jury room to deliber-  
23 ate, should you require assistance with regard to testimony or  
24 the law as I give it to you in this charge, you may request  
25 that any portion of the testimony, including any portion of the



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tapes or any portion of my charge be read back to you. You will then be brought into the courtroom, and the portion of the testimony or the portion of the charge which you request will be read to you.

In the same vein, should you wish to see the indictment or any exhibit which is in evidence, you may call for the indictment or the exhibit, and it will be sent into the jury room for you to see.

Each of the defendants has pleaded not guilty. Therefore, the Government has the burden of proving the charges against them beyond a reasonable doubt. It is a burden that never shifts and remains upon the Government throughout the entire trial.

A defendant does not have to prove his innocence. He need not present any evidence, and he need not testify on his own behalf. On the contrary, he is presumed to be innocent of the charges contained in the indictment. The presumption of innocence was in his favor at the start of the trial and continues in his favor throughout the trial. It is removed if and when you are satisfied that the Government has sustained its burden of proving the guilt of a particular defendant on a particular charge beyond a reasonable doubt.

You will, as I will tell you later, consider each defendant separately and each charge separately.

1           As I told you when you were being selected, an  
2  
3 indictment is not evidence. It is a technique or method or  
4 procedure by which persons accused by a grand jury of crimes  
5 are brought into court and then their guilt or innocence is  
6 determined by a trial jury such as you are.

7           An indictment has no evidentiary value. An indict-  
8 ment does not constitute proof or evidence. It is merely an  
9 accusation.

10          The indictment in this case contains fourteen counts.  
11 Twelve of these counts will be presented to you for consider-  
12 ation. Each of these counts charges a separate offense or  
13 crime. Each must be considered separately.

14          The indictment names eleven defendants. However,  
15 only four -- Stuart Steinberg, William Capo, Howard Kaye and  
16 James Parker -- are on trial before you. These are the only  
17 persons whose guilt or innocence you must announce in your  
18 verdict, although, as I will explain to you shortly, in con-  
19 sidering their guilt or innocence you may have to determine  
20 the nature of the participation, if any, of the other persons  
21 named in the indictment.

22          In the determination of innocence or guilt, you  
23 must bear in mind that guilt is personal. The guilt or  
24 innocence of each defendant on trial before you must be de-  
25 termined separately with respect to him, solely on the evidence



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presented against him or the lack of evidence.

The case relative to each defendant stands upon the proof of the charge against him and not against somebody else. You will consider Stuart Steinberg separately; you will consider William Capo separately; you will consider Howard Kaye separately, and you will consider James Parker separately.

The charges in this indictment refer to the violation of Federal law, specifically Sections 812, 841, 843 and 846 of Title 21 of the United States Code.

In pertinent part, Section 841 provides:

"It shall be unlawful for any person knowingly and intentionally to distribute or possess with intent to distribute a controlled substance."

Section 812 sets forth and defines "controlled substances" in various schedules.

Section 846 makes it a crime to conspire to commit certain offenses, including the offense which I have defined a moment or two ago in Section 841.

Section 843 makes it a crime for anyone knowingly and intentionally to use any communication facility in committing or causing or facilitating the commission of any act or acts in violation of the laws to which I made reference a moment or two ago.

Turning now to the indictment, Count 1 reads as

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follows:

"The grand jury charges:

"1. From on or about the 1st day of June 1972 and continuously thereafter, up to and including the date of the filing of this indictment" -- which I state to you was December 5, 1973 -- "in the Southern District of New York, Stuart Steinberg, John Perlman, Jeffrey Priesman, William Capo, Michael Durst, Susan Weinblatt, Stephen Effron, Howard Kaye, Stanley Nicastro, James Parker and Jane Doe, a/k/a 'Sam', the defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

"2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown, in violation Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

"3. It was further part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule III controlled substances, the exact amount thereof being to



the grand jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

"OVERT ACTS

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:"

There follow eleven stated or alleged overt acts, which I will return to later in my charge; and, finally, at the bottom of the count, we have "(Title 21, United States Code, Section 846.)"

Following the conspiracy charged in Count 1, there are additional charges, which are called substantive counts. The conspiracy charge in Count 1 is entirely separate and distinct from the charges made in the substantive counts. This fact, however, does not prevent you from considering proof of actual violations as evidence that a conspiracy existed.

However, before you may convict any of the defendants under Count 1, all of the following essential elements must be established by the Government beyond a reasonable doubt:

First: you must be satisfied that the conspiracy charged did in fact exist; that is, that there was an agreement to deal in controlled substances and narcotic drug controlled substances, at or about the time alleged. Although the

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1 indictment alleges a period from on or about the first day of  
2 June 1972 and up to and including the date of the filing of  
3 the indictment, which I told you was December 5, 1973, I think  
4 you will recall that the proof covered the period between  
5 June and September of 1973.  
6

7 Second: that a particular defendant -- as I say, you  
8 must consider each defendant separately -- that a particular  
9 defendant knowingly and wilfully associated himself with the  
10 conspiracy; and

11 Third: that at least one of the overt acts set forth  
12 in the indictment did take place and that at least one of the  
13 overt acts took place in the Southern District of New York,  
14 which includes the Borough of Manhattan, in which this court-  
15 house is located.

16 What is a conspiracy?

17 A conspiracy is a combination or agreement of two  
18 or more persons by concerted action to accomplish a criminal  
19 or unlawful purpose or some purpose not in itself criminal or  
20 unlawful by criminal or unlawful means.

21 The gist of the crime of conspiracy is the unlawful  
22 combination or agreement to violate the law. Whether or not  
23 the defendants accomplished what is alleged they conspired  
24 to do is immaterial to the question of guilt or innocence.

25 A conspiracy has sometimes been called a partnership



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1 in criminal purposes, in which every member becomes the agent  
2 of every other member. However, to establish a conspiracy,  
3 the Government is not required to show that two or more per-  
4 sons sat around a table and entered into a solemn contract,  
5 orally or in writing, stating that they have formed a conspir-  
6 acy to violate the law, setting forth details of the plan, the  
7 means by which the unlawful project is to be carried out or  
8 the part to be played by each conspirator.

10 Indeed, it would be extraordinary if there were  
11 such a formal document or specific oral agreement. Your common  
12 sense will tell you that when men in fact undertake to enter  
13 into a criminal conspiracy, much is left to unexpressed under-  
14 standing. Conspirators do not usually reduce their agreements  
15 to writing or acknowledge them before a Notary Public, nor do  
16 they publicly broadcast their plans.

17 From its very nature, a conspiracy is almost always  
18 characterized by secrecy, thereby rendering detection difficult.

19 Thus, it is sufficient if two or more persons in any  
20 manner, through any contrivance, impliedly or tacitly, come to  
21 a common understanding to violate the law. Express language  
22 or specific words are not required to indicate assent or  
23 attachment to a conspiracy.

24 Let me emphasize to you that it is not required that  
25 you find all eleven of the co-conspirators alleged in the

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indictment were in fact members of the conspiracy in order to find that a conspiracy existed. You need only find that two or more persons, including any of these four defendants, entered into an unlawful agreement in order to find that a conspiracy existed.

In determining whether or not there has been an unlawful agreement, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose. The adage "Actions speak louder than words" is applicable here. Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other and with the reasonable inferences flowing therefrom show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If, upon such consideration of all the evidence, direct or circumstantial -- and I shall define those two terms later in my charge -- you find beyond a reasonable doubt that the minds of alleged conspirators, or at least two of them, met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then the proof of the existence of the conspiracy is



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established.

You have heard testimony that Bryan Noone and Arthur Anderson were acting as agents, and Ricky Citrola was an informant for the Drug Enforcement Administration, an agency of the United States Government, in their dealings with Mr. Steinberg and other alleged co-conspirators.

In determining whether Steinberg "conspired", as that term may be defined, you may not consider any agreements or understandings that Steinberg had, if any, with Noone, Anderson or Citrola. You must find beyond a reasonable doubt that Steinberg and the alleged co-conspirators conspired among themselves, separate and apart from any agreement Steinberg or anyone else may have had with Noone, Anderson or Citrola.

Accordingly, evidence, even if believed, that Steinberg agreed with Noone, Anderson or Citrola to distribute or possess with intent to distribute a substance is not proof that Steinberg conspired as charged in Count 1.

There must be proof beyond a reasonable doubt that Steinberg agreed with the alleged co-conspirators as distinguished from any agreement between Steinberg and Noone, Anderson or Citrola to distribute or possess with intent to distribute controlled substances and narcotic drug controlled substances.

It is not necessary for the Government to prove the

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2 success of the conspiracy in order to establish a violation of  
3 a conspiracy statute. As a conspiracy is basically an agree-  
4 ment to violate the law, it may exist even though you find  
5 the objectives were never accomplished.

6 The indictment charges several illegal objects or  
7 goals of the conspiracy. These illegal objects were the sale  
8 of Schedule I controlled substances, in this case hashish and  
9 hashish oil; the sale of Schedule II narcotic drug controlled  
10 substances, in this case cocaine; and the sale of Schedule III  
11 controlled substances, in this case PCP, Seconal and Tuinal.

12 It is not necessary that the Government prove that  
13 these defendants agreed to distribute all of those substances.  
14 It is sufficient for the purpose of establishing whether or  
15 not a conspiracy as charged in the indictment existed if you  
16 find beyond a reasonable doubt an agreement between two or  
17 more persons, including any of these four defendants, to dis-  
18 tribute any of those substances.

19 I caution you that the indictment charges, and  
20 the Government must prove, the existence of one conspiracy,  
21 not more, but I instruct you that a single conspiracy may have  
22 more than one illegal purpose, and a defendant need not parti-  
23 cipate in all of the illegal purposes of a conspiracy in order  
24 to be found guilty, so long as he is found by you to be a  
25 member of the single conspiracy charged in the indictment and



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not of some other conspiracy.

On the other hand, if you find that the Government failed to establish beyond a reasonable doubt the one overall agreement as charged among the defendant you are considering and the alleged co-conspirators, you must acquit that defendant of the conspiracy charge.

Similarly, if you find that the Government failed to show the existence of the one overall agreement charged beyond a reasonable doubt but, rather, a number of separate agreements among the alleged co-conspirators, then you must acquit the defendants of the conspiracy charge.

Once satisfied that the conspiracy charged existed and that, in fact, it was a single conspiracy, you must ask yourself who its members were.

In deciding whether or not a defendant was a member of a conspiracy, you must do so on the basis of that defendant's own statements, acts and conduct.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether or not the particular defendant participated in the conspiracy but whether he did so with knowledge of its unlawful purpose. Did he join with awareness of at least some of the basic aims and purposes of the conspiracy?

The word "knowingly" as defined in the crimes

1 charged here means that the particular act was done voluntar-  
2 ily and purposely and not because of mistake or accident.  
3

4 Knowledge may be proven by a defendant's conduct and  
5 by all the facts and circumstances surrounding the case. No  
6 person can intentionally avoid knowledge by closing his eyes  
7 to facts which should prompt him to investigate.

8 In determining whether a defendant acted knowingly  
9 and intentionally, it is relevant for you to consider his  
10 mental and physical condition during the period of time he is  
11 alleged to have committed the acts charged. If you find that  
12 a defendant was under the influence of drugs at the time of  
13 any acts or during any conversation, either in person or by  
14 telephone, you would be justified in concluding that there was  
15 a reasonable doubt as to whether the defendant acted or spoke  
16 intentionally, at least on that occasion.

17 The word "wilfully" is used in the crimes charged  
18 here and means that the act was committed by a defendant  
19 voluntarily, with knowledge that it was prohibited by law and  
20 with the purpose of violating the law and not by accident,  
21 mistake or in good faith.

22 Knowledge is a matter of inference from facts  
23 proved. It is not necessary that the particular defendant  
24 you are considering be fully informed as to the details of  
25 the scope of the conspiracy in order to justify any inference



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of knowledge on his part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

Once you have found a conspiracy to have existed and a defendant to have knowingly participated in it, the extent of his individual participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited than that of his co-conspirators, an individual defendant is equally culpable so long as he was, in fact, a conspirator.

However, participation in a single isolated transaction is not sufficient to show membership in a continuing conspiracy.

I want to caution you that mere innocent association with one or more of the conspirators does not make one a member of the conspiracy; nor is knowledge without participation sufficient. What is necessary is that a defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one in

1 SLP 16  
2 the course of the conspiracy and in furtherance of the common  
3 purpose are deemed to be the acts of all, and all are respons-  
4 ible for such acts.

5 Accordingly, if you find in accordance with these  
6 instructions that the alleged conspiracy existed and that some  
7 or all of the defendants participated in it, then acts done  
8 and statements and declarations made in furtherance of the  
9 conspiracy by the persons found by you to have been members of  
10 the conspiracy may be considered against a defendant who you  
11 find was a member, even though such acts or declarations were  
12 made in the absence and without the knowledge of that defend-  
13 ant.

14 It is important to note that this principle applies  
15 only to the acts and declarations done or made during the  
16 continuance of the conspiracy and in furtherance of it, that  
17 is, to carry out an unlawful objective or purpose of the con-  
18 spiracy. It does not apply to acts or declarations which do  
19 not have these characteristics.

20 As I have already mentioned, an essential element of  
21 the crime of conspiracy is that an overt act to effect the  
22 object of the conspiracy be committed by at least one of the  
23 co-conspirators.

24 An overt act is any step, action or conduct which  
25 is taken to achieve or further the objective of the conspiracy.



1 An overt act need be neither criminal nor the very crime which  
2 is the object of the conspiracy. Thus, in this case, the  
3 overt acts listed in the indictment are not necessarily, by  
4 themselves, criminal or illegal.

5 If you find that any of these acts were committed  
6 to further the unlawful enterprise, regardless of whether it  
7 was an act which by itself would be innocent, then the overt  
8 act requirement has been satisfied.

9 I indicated before when I was reading from Count 1  
10 that it alleged certain overt acts. I will now turn back to  
11 Count 1 of the indictment and read the alleged overt acts:

12 "OVERT ACTS

13 "In pursuance of the said conspiracy and to effect  
14 the objects thereof, the following overt acts were committed  
15 in the Southern District of New York:

16 "1. On or about June 27, 1973, defendant William  
17 Capo delivered a package containing phencyclidine to defendant  
18 Stuart Steinberg, in the vicinity of 135 East 35th Street,  
19 New York, New York."

20 I state to you as a matter of law that that location  
21 is within the Southern District of New York. Whether or not  
22 this happened is a matter for you to determine from the evi-  
23 dence before you.

24 "2. On or about July 10, 1973, defendant Stuart  
25

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Steinberg delivered a package containing phencyclidine, in the vicinity of 135 East 35th Street, New York, New York.

"3. On or about July 10, 1973, defendant Michael Durst went to 135 East 35th Street, New York, New York.

"4. On or about July 17, 1973, defendant Stuart Steinberg discussed the sale of ten pounds of phencyclidine for \$136,000.

"5. On or about July 23, 1973, the defendant Jeffry Priesman had a telephone conversation.

"6. On or about July 26, 1973, defendants Howard Kaye and Stuart Steinberg discussed the sale of fifty pounds of either cocaine or phencyclidine for \$680,000.

"7. On or about July 26, 1973, defendants Stanley Nicastro and Stuart Steinberg had a telephone conversation.

"8. On or about July 26, 1973, defendants James Parker and Jane Doe, a/k/a 'Sam', had a telephone conversation.

"9. On or about August 26, 1973, defendants Susan Weinblatt and Stuart Steinberg discussed the sale of ten pounds of hashish.

"10. On or about August 8, 1973, defendant Stephen Effron offered to sell three pounds of cocaine to defendant Stuart Steinberg.

"11. On or about August 28, 1973, defendant John Perlman discussed the sale of fifty pounds of phencyclidine."



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Now I have finished reading the alleged overt acts.

It is not necessary for the Government to prove that each member of the conspiracy committed or participated in the particular overt act, since the act of any one done in furtherance of the conspiracy becomes the act of all the other members.

Also, the Government is not required to prove each of the overt acts.

If you find that any one of the overt acts was done in the Southern District and that it was done in furtherance of the conspiracy charged, then this requirement has been satisfied.

While the indictment charges in Count 1 that the conspiracy began on or about the 1st day of June 1972 and continued to the date of the filing of the indictment, which, as I have indicated, was December 5, 1973, it is not essential that the Government prove that the conspiracy started and ended on or about those specific dates.

Indeed, in the present case, the Government's proof, as I recall, is that the conspiracy ended on or about August 24, 1973 and encompassed a period which ran from approximately June to September of 1973.

It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the

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period set forth in the indictment and that at least one overt act was committed in furtherance thereof in that period.

We turn now to the so-called substantive counts, Counts 2, 3 and 4, which I will discuss together, and Counts 5, 7 through 12 and 14.

Counts 2, 3 and 4 of the indictment charge the defendants Steinberg and Capo as follows:

"SECOND COUNT

"The Grand Jury further charges:

"On or about the 26th day of June 1973, in the Southern District of New York, Stuart, Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approximately .21 grams of phencyclidine hydrochloride.

"(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

"THIRD COUNT

"The Grand Jury further charges:

"On or about the 27th day of June 1973, in the Southern District of New York, Stuart Steinberg, William Capo and Michael Durst, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule III controlled substance, to wit, approxi-



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mately 50.43 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(B).)

"FOURTH COUNT

"The Grand Jury further charges:

"On or about the 10th day of July 1973, in the  
Southern District of New York, Stuart Steinberg, William Capo  
and Michael Durst, the defendants, unlawfully, intentionally  
and knowingly did distribute and possess with intent to dis-  
tribute a Schedule III controlled substance, to wit, approxi-  
mately 222.8 grams of phencyclidine hydrochloride.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(B).)"

With regard to these so-called substantive counts  
of the indictment, Counts 2, 3 and 4, before you can find  
a defendant guilty of the crime charged, you must be convinced  
that the Government has proved each of the following elements  
beyond a reasonable doubt:

First: that on or about the dates charged, the  
defendant either distributed or possessed with intent to dis-  
tribute a controlled substance;

Second: that on each occasion the defendant named  
did so unlawfully, wilfully and knowingly, and

Third: that the controlled substance was phencyclidine

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hydrochloride, which is sometimes called "PCP".

You will note that the first element of the offense is distributing or possessing with intent to distribute the particular substance.

At the outset, you will note that these terms are used in the alternative. Therefore, you may find that the first element is established if you are satisfied either that the defendant you are considering distributed or possessed with intent to distribute. You need not find that he did both.

What do these terms mean? The word "distribute" means the actual constructive or attempted transfer of the drug. That definition is contained in Title 21, United States Code, Section 812, subdivisions 8 and 11.

The word "possessed" has its common, everyday meaning, that is, to have something within your control.

The word "intent" refers to a person's state of mind. As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary consequences of his acts.

Again, in determining whether the defendant Steinberg had the specific intent to distribute a controlled substance, you should consider his mental and physical condition at the time.

If because of Steinberg's own drug use and the



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consequence effect of such drugs on his mental and emotional state, you find a reasonable doubt that he was capable of forming the specific intent to distribute a controlled substance at the time of the transaction, you must acquit him.

Putting all the words that I have mentioned together, the term "possess with intent to distribute" can be fairly stated to mean to control an item with the state of mind or purpose of transferring that item.

As to the second element, the terms "unlawfully", "wilfully" and "knowingly", which I also defined before, mean that you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he did it deliberately.

Of course, it is not necessary that the particular defendant you are considering knew that he was violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his acts.

As to the third element, the indictment charges that the controlled substance is phencyclidine. I instruct you as a matter of law that phencyclidine is a controlled substance. However, you must still find beyond a reasonable doubt that the substance in Government's Exhibits 4-B, 5-C and 7-C is phencyclidine or PCP.

On that subject, you have heard the testimony of Michael Tsouros, the chemist employed by the Drug Enforcement Administration.

Turning now to Counts 5, 7, 8 through 12 and 14:

These counts charge violations of Section 843(b) of Title 21, United States Code, which makes it a crime for anyone "knowingly and intentionally to use any communication facility in committing or in causing or in facilitating the commission of any act or acts" in violation of the laws which are set forth in this indictment.

In this case, it is charged that the defendants used the telephone in furtherance of the conspiracy charged in Count 1, an act in violation of the laws which are set forth in the indictment.

There are, as I have indicated, a number of counts here. I will read the first of them, Count 5, or the Fifth Count, and then, rather than continuously read them, I will summarize the other counts.

"FIFTH COUNT

"The Grand Jury further charges:

"On or about the 26th day of July 1973, in the Southern District of New York, James Parker and Jane Doe, a/k/a 'Sam', the defendants, did unlawfully, wilfully and knowingly use a communication facility, to wit, the telephone,



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in committing and in causing and facilitating the commission of the conspiracy set forth in Count 1 of this indictment. (Title 21, United States Code, Section 843(b).)"

The seventh count charges a telephone conversation on the same day, the 26th day of July, 1973, involving Stuart Steinberg and Howard Kaye.

The eighth count also alleges a telephone conversation on July 26, 1973, involving Stanley Nicastro and Stuart Steinberg.

Count 9 alleges a telephone conversation on or about July 31, 1973, involving William Capo, Michael Durst and Stuart Steinberg.

Count 10 alleges a telephone conversation on or about August 6, 1973, involving William Capo, Michael Durst and Stuart Steinberg.

Count 11 alleges a telephone conversation on or about August 6, 1973, involving Stuart Steinberg and Stephen Effron.

Count 12 alleges a telephone conversation on or about August 8, 1973, involving Stuart Steinberg and Stephen Effron.

Count 14 alleges a telephone conversation on or about August 8, 1973, involving Susan Weinblatt and Stuart Steinberg.

1 SLP 26  
2 In order to convict any defendants on these counts,  
3 you must find each of the following elements beyond a reason-  
4 able doubt: --

5 I would suggest, on the counts which go from Counts  
6 5 through 14, although there is no Count 6, and there is no  
7 Count 13, Mr. Steinberg is named in Counts 7 through 12 and  
8 14; Mr. Capo is named in Counts 9 and 10; Mr. Kaye is named  
9 in Count 7, and Mr. Parker is named in Count 5.

10 In order to convict any defendant on these counts,  
11 you must find each of the following elements beyond a reason-  
12 able doubt:

- 13 1. That the conspiracy charged in Count 1 existed.  
14 2. That on or about the date charged the defendant  
15 or defendants knowingly or intentionally used the telephone.  
16 3. That this use of the telephone was for the pur-  
17 pose of furthering the conspiracy charged in Count 1.

18 You may consider evidence relating to a defendant's  
19 mental state at the time of the alleged commission of certain  
20 acts such as telephone conversations he may have engaged in,  
21 to determine whether he possessed the mental capacity and in-  
22 tent required to constitute a violation of the Federal nar-  
23 cotics laws.

24 The defendants Kaye and Steinberg contend that by  
25 virtue of mental disease or defect resulting at least in part



1 from their use of drugs, they were not responsible for their  
2 conduct at the times and places charged in the indictment.  
3 They have offered evidence in support of this contention.  
4

5 The Government has offered evidence in opposition  
6 to it. The burden of proof is upon the Government to prove  
7 beyond a reasonable doubt that each defendant was responsible  
8 for his conduct during the period covered by the charges in the  
9 indictment.

10 The law defines mental disease as defect for the  
11 purpose of responsibility for criminal conduct as follows:

12 "A person is not responsible for criminal conduct  
13 if at the time of such conduct as a result of mental  
14 disease or defect he lacks substantial capacity either to  
15 appreciate the wrongfulness of his conduct or to conform  
16 his conduct to the requirements of law."

17 Under that definition, any lack of capacity must be  
18 the result of mental disease or defect, including disease or  
19 defect induced by the use of drugs and must be substantial.

20 The lack of capacity may be either to appreciate  
21 one's wrongful conduct or to conform such conduct to the re-  
22 quirements of law. The mere fact that a person repeatedly  
23 engages in criminal conduct does not in and of itself justify  
24 a finding that he or she is not responsible for his conduct.

25 You will recall that the defendants Kaye and

1 Steinberg called three doctors who have specialties in  
2 psychiatry. They had the other specialties, but I mention  
3 psychiatry at this time. You heard that testimony, and you  
4 should consider that testimony on the issue of the respons-  
5 ibility of the defendants Kaye and Steinberg for their con-  
6 duct.  
7

8           However, you are by no means limited in considering  
9 this issue to the opinions of these doctors. You are en-  
10 titled to take into account, and you should take into account,  
11 any other evidence that you believe relates to that issue,  
12 including the evidence which you have previously considered  
13 on the issue of whether a particular defendant's conduct was  
14 wilful.

15           The defendant Steinberg also contends that the  
16 transactions in this case were induced by Government employees.  
17 In short, he advances a defense which the law terms entrap-  
18 ment or enticement.

19           Under this defense, if you find that no crime would  
20 have occurred but for the conduct of Agents Noone and Anderson  
21 or Ricky Citrola, you must acquit Steinberg of all charges.

22           Now, let us consider this defense. Law enforcement  
23 officials, in their efforts to enforce the criminal laws and  
24 to apprehend those engaged in criminal activities, may re-  
25 sort to stratagems or deception and may also use informers.



1       Such methods are not in any way forbidden by law and are  
2  
3       often necessary in the detection and prosecution of certain  
4       crimes.

5               Whether or not you personally agree with the policy  
6       of using such methods is not in issue and is not before you.  
7       The fact that Government officials or employees merely afford  
8       opportunities or facilities to one who is ready and willing  
9       to violate the law when the opportunity presents itself does  
10      not constitute entrapment or enticement.

11             When, for example, the Government has reasonable  
12      grounds for believing that a person is engaged in the illicit  
13      sale of narcotics, it is not unlawful entrapment or enticement  
14      for a Government agent to pretend to be someone else and to  
15      offer, directly or through an informer or other decoy, to  
16      purchase narcotics from such suspected person.

17             However, in their efforts to enforce the laws, the  
18      Government officials or employees may not entrap an innocent  
19      person who, except for the Government's inducement would not  
20      engage in the criminal conduct charged.

21             Thus, if the criminal design originates with the  
22      Government officers or employees, and they implant in the  
23      mind of an otherwise innocent person the disposition to com-  
24      mit the crime charged and to induce its commission, the  
25      prosecution may not succeed.

B7

1  
2 In short, entrapment or enticement occurs only when  
3 the criminal conduct was the product of the creative activity  
4 of law enforcement officials; that is, if they initiate,  
5 incite, induce, persuade or lure an otherwise innocent per-  
6 son to commit a crime or to engage in criminal conduct. And  
7 if that occurs, the Government may not avail itself of the  
8 fruits of those instigating activities.

9 Such conduct offends the public conscience, and so,  
10 while the crime may have been committed, the Government is  
11 barred from benefiting by the improper conduct of its own  
12 officers or employees.

13 Here, Steinberg contends that he was free of any  
14 criminal purpose to deal in drug transactions and that he  
15 had no previous disposition, intent or purpose to engage in  
16 such criminal activity but was induced to engage in the con-  
17 duct charged against him by the creative activity of Govern-  
18 ment officials or employees.

19 The Government denies this and contends that  
20 Steinberg was merely afforded the opportunity on each occa-  
21 sion to commit the offense and that he readily and willingly  
22 responded thereto and engaged in the transaction which are  
23 the subject of the indictment without inducement of any  
24 kind.

25 In this case, Agent Noone is a Government agent or



1 employee. If you find some evidence that a Government  
2 agent, by initiating the illegal conduct, induced the defend-  
3 ant to engage in such conduct, then the Government must prove  
4 beyond a reasonable doubt that the inducement was not the  
5 cause of the crime, that is, that the defendant was ready and  
6 willing to commit the crime without any persuasion.  
7

8 To sustain its burden of proof, the Governmen has  
9 to satisfy you that, in fact, its agents have not seduced an  
10 innocent person but that the inducement which brought about  
11 the offense charged against Steinberg was but another instance  
12 of the kind of conduct which he was prepared to engage in if  
13 given an opportunity.

14 Now, at the beginning I indicated that you are the  
15 triers of the fact. You have to determine the truth, and  
16 you have to appraise the credibility of the testimony and  
17 of the witnesses in this case.

18 Now, how do you determine the truth and how do you  
19 appraise the credibility of the witnesses who appeared here  
20 and testified in this courtroom?

21 Well, you use your own plain, every day common  
22 sense. You brought your common sense with you the first  
23 day you stepped into this jury box. You have it with you  
24 now. You will take it into the jury room, and I trust that  
25 when you return ultimately from the jury room you will still

1 have it with you.

2           You have seen the witnesses; you have observed the  
3 manner of their testifying, and whatever credit you may give  
4 them must be determined by their conduct and their manner of  
5 testifying and their relationship or interest in the outcome.  
6 In other words, you again apply your common sense in your  
7 everyday experience.

8           You may, of course, take into consideration the  
9 interest of a witness. For example, the narcotics agents  
10 might be said to have an interest in this case. It is a  
11 case which they investigated. An interested witness is not  
12 necessarily unworthy of belief. This is just one factor,  
13 however, which you should consider or may consider in determinin  
14 the weight and credibility to be given to that witness' testi-  
15 mony.

16           If any witness has wilfully testified falsely to  
17 any material fact, you may disregard all his testimony or  
18 accept such part of it as you believe worthy of belief or as  
19 it appeals to your reason or your judgment.

20           A witness may be discredited or impeached by con-  
21 tradictory evidence or by evidence that at other times the  
22 witness has made statements which are inconsistent with the  
23 witness' present testimony.

24           If you believe that any witness has been impeached  
25



1 sljp 33  
2 and thus discredited, it is your exclusive province to give  
3 the testimony of that witness such weight and credibility,  
4 if any, as you may think it deserves.

5 Because a particular witness may be a police  
6 officer or another law enforcement officer such as an agent  
7 of the Drug Enforcement Administration, that does not mean  
8 that his testimony is deserving of any special consideration  
9 or any greater or lesser weight by reason of that fact.

10 You take the witnesses as you find them; you watch  
11 them as they testify and you determine based on your own com-  
12 mon sense what the facts are.

13 You will recall that the defendants did not  
14 testify. A defendant has the absolute right to remain silent  
15 and you must not regard as prejudicial to a defendant the  
16 fact that he did not take the stand. You must not draw a  
17 presumption of guilt or any inference against a defendant  
18 because he did not testify.

19 I said a while back that I would come back to  
20 the matter of direct and circumstantial evidence. It is well  
21 to explain now the difference between these two types of evi-  
22 dence.

23 Direct evidence is where a witness testifies to  
24 what he saw, heard or observed, what he knows of his own  
25 knowledge, something which comes to him by virtue of his own

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2 senses.

3 Circumstantial evidence is evidence of facts and  
4 circumstances from which one may infer connected facts which  
5 reasonably follow the common experience of mankind. Stated  
6 somewhat differently, circumstantial evidence is that evi-  
7 dence which tends to prove a disputed fact by proof of other  
8 facts which have a logical tendency to lead the mind to a  
9 conclusion that those facts exist which are sought to be  
10 established.

11 Circumstantial evidence, if believed, is of no  
12 less value than direct evidence, for in either case you must  
13 be convinced beyond a reasonable doubt of the guilt of the  
14 defendant you are considering.

15 Let us take one simple example, one which is  
16 offered in this Courthouse, to illustrate what is meant by  
17 circumstantial evidence. We will assume - although it was  
18 contrary to the fact this morning - that when you entered  
19 the Courthouse this morning the sun was shining brightly out-  
20 side and it was a clear day, there was no rain, the sky was  
21 clear.

22 Now, assume that in this Courtroom the blinds are  
23 drawn and the drapes are closed so that you cannot look out-  
24 side. Assume that you are sitting in this jury box and  
25 despite the fact that it was dry when you entered the building



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somebody walks in with an umbrella dripping water, followed then in a short time by a man with a raincoat, and the raincoat is wet.

Taking our assumptions, you cannot look out the Courtroom to see whether it is raining or not, and if you are asked, is it raining, you cannot say you know it directly of your own observation, but certainly upon the combination of facts as I have given them, even though when you building it was not raining outside, it would be reasonable and logical for you to conclude that it was raining now.

That is about all there is to circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence of some further fact.

There are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The Government may ask you to draw one set of inferences while the defendants may ask you to draw another. It is for you to decide, and for you alone, what inference you will draw.

Knowledge and intent, which I have mentioned before and tried to define for you, exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision is these inferences.

1 sljp 36  
2 It is for you to take into consideration all the  
3 facts and circumstances shown by the evidence, including the  
4 exhibits, and to determine from all such facts and circum-  
5 stances whether the requisite knowledge and intent were pres-  
6 ent at the time in question. Direct proof is unnecessary.  
7 Knowledge and intent may be inferred from all the surrounding  
8 circumstances.

9 On the question of knowledge and willfullness,  
10 you may also consider false statements as evidence of a  
11 defendant's guilty state of mind. If you find that a defen-  
12 dant when questioned by a law enforcement official made any  
13 deliberate false statement, you may consider such false state-  
14 ment as circumstantial evidence from which consciousness of  
15 guilt or criminal intent may be inferred. This is so because  
16 of the well established legal principle that exculpatory  
17 statements made upon interrogation with intent to divert  
18 suspicion or mislead the investigator, when shown to be  
19 false, are circumstantial evidence of guilty consciousness  
20 and have independent probative force.

21 Again, whether or not evidence as to a defendant's  
22 explanation or statement points to a consciousness of guilt,  
23 and the significance, if any, to be attached to any such evi-  
24 dence, are matters for determination by you.

25 Certain alleged false statements by the defendant



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Kaye have been testified to. This evidence may be considered as relevant evidence of whether the defendant Kaye acted knowingly and willfully in connection with the charges of conspiracy and unlawful use of a communication facility as alleged in this indictment.

Turning from the subject which I just discussed to one other subject. You have heard me mention at the beginning of the trial and during this charge reasonable doubt.

What is reasonable doubt? A reasonable doubt is such a doubt as would cause prudent men to hesitate to act in matters of importance to themselves. It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is one which appeals to your reason, your judgment, your common sense and your experience.

Reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Vague, speculative or imaginary qualms or misgivings are not reasonable doubts.

It is not necessary for the Government to prove the guilt of each defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason is that in this world of ours it is practically

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2 impossible for a person to be absolutely certain of any  
3 controverted fact which by its nature is not susceptible of  
4 mathematical certainty. In consequence, the law is such  
5 that in a criminal case it is enough that the defendant's  
6 guilt is established beyond a reasonable doubt, not beyond  
7 all doubt.

8 If, after a fair, impartial and careful considera-  
9 tion of all the evidence, you are convinced of the guilt of  
10 the defendant you are at that point considering, you must  
11 convict. If, on the other hand, after such a fair, impartial  
12 and careful consideration of all the evidence, you doubt the  
13 defendant's guilt, you must acquit him.

14 You are to decide the case upon the evidence and  
15 the evidence alone. You must not allow your personal feel-  
16 ings about the sexual activities, morals or the ways of life  
17 of the defendants to affect your decision, and you must not  
18 be influenced by any assumption, conjecture or sympathy or  
19 any inference not warranted by the facts until proven to  
20 your satisfaction.

21 The defendants have each been charged with sepa-  
22 rate crimes in the 12 counts of the indictment which are being  
23 given to you. I have indicated that of the 14 counts ori-  
24 ginally, 12 will be submitted to you, Counts 1 through 5,  
25 7 through 12 and 14. You recall from what I have told you



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that different defendants are charged in different counts.

Each defendant is entitled to have his guilt or innocence as to each of the crimes charged determined from his own conduct and on the evidence which applies to him as if he were being tried alone. When you deliberate, you shall give separate consideration and render separate verdicts with respect to each defendant and each count.

To assist you, and only to assist you in this, not to suggest anything one way or the other, Miss Kruger will hand your foreman a verdict form which sets forth the names of the defendants, the numbers of the counts on which they are charged, and then have a space for your foreman to work with as the jury deliberates. This is done merely to assist you and is not given to you to suggest anything.

If you find that a defendant is guilty beyond a reasonable doubt on any of the crimes charged in the indictment, a verdict of guilty as to that count should be returned as to him. The guilt or innocence of any one defendant of any of the crimes charged should not influence your verdict regarding any other defendant. You may find either one, two, three or all of the defendants guilty. You might find either one, two, three or all of the defendants not guilty. You will consider each defendant individually on each charge.

I will conclude with these few final remarks:

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Under your oath as jurors you may not allow the consideration of punishment which might be inflicted upon a convicted defendant to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is solely to determine the guilt or innocence of each defendant upon the basis of the evidence and the law.

If you believe that some or all of the charges against a defendant have not been proven beyond a reasonable doubt, that defendant should be acquitted of those charges which the Government has not proved beyond a reasonable doubt. But, on the other hand, if you find that a charge has been proved beyond a reasonable doubt, you should not refuse because of sympathy or for any other reason to render a verdict of guilty.

There are 12 people on this jury. Any verdict must be the unanimous verdict of all of you. However, no one should enter upon the deliberation in the jury room with such pride of opinion that he or she would refuse to change it if convinced by intelligent argument on the part of another juror or jurors that they are right. However, you are not to do violence to your own well founded opinion and common sense.

As I said a few moments ago, you will be taking your good common sense into the jury room. I expect that when



1 sljp 41

2 you come out of the jury room your good common sense and  
3 your good conscience will accompany you.

4 You are entitled, each of you, to your opinion.  
5 In other words, each of you must decide the case for himself  
6 or herself after thoroughly reviewing the evidence and ex-  
7 changing views with your fellow jurors.

B9 8 After I have met with counsel at the side bar  
9 Miss Kruger will give your foreman the verdict form to which  
10 I made reference a few moments ago to assist you in reviewing  
11 this case.

12 After you have exchanged your views in the jury  
13 room, you should vote on each defendant and on each count  
14 separately, and the vote will be kept by your foreman.

15 When you go into the jury room, ladies and gentle-  
16 men, you will be placed in charge of the marshal. All commu-  
17 nications with the Court after you are placed in charge of  
18 the marshal will be by note given to the marshal. Your note  
19 will then be delivered to me. I will then review what you  
20 request with counsel, and, where proper, will try to oblige  
21 you and respond to your requests.

22 It is now five minutes after eleven. As I say,  
23 I am going to speak with counsel just a moment. In the mean-  
24 time I would remind you that if you are deliberating during  
25 the middle of the day, the so-called lunch hour, I will give

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2 you an option based on the weather. If you wish to order  
3 sandwiches sent in, you may do so. I suggest, if you do that,  
4 you allow for perhaps an hour from the time you place your  
5 order to the time the sandwiches are delivered. If you wish  
6 to go out the marshal will take you out to a restaurant. So  
7 I suggest that since we are close to the noon hour you might  
8 consider which of those two options you wish to exercise.  
9 Needless to say, your lunch will be paid for either way.

10 I suggest, finally, that this is an important  
11 case to all concerned, and I want this jury to deliberate  
12 with the idea in mind that you are under no pressure to act  
13 or not act. Your first obligation is to review the evidence  
14 in the case, to discuss it fully and thoroughly.

15 I will see to your convenience in every way  
16 possible, so that I would ask that you put out of your mind  
17 any feelings of pressure, because you are now about to en-  
18 gage in one of the most important duties of citizenship.

19 Ladies and gentlemen, I have now completed my  
20 charge. Before sending you to deliberate, I will see counsel at  
21 the side bar. In the meantime I would ask Mrs. Satin to get  
22 her coat from the jury room and to return to the Courtroom,  
23 because after I send the jury in to deliberate, I should  
24 like to speak with her. She is in the frustrating position  
25 of having been our sole surviving alternate juror. She has



1 sljp 43

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2 sat through this case but will not be able to be present to  
3 deliberate with you. So when I send her on her way I want  
4 to thank her personally on behalf of all of us for the ser-  
5 vice which she has rendered to this Court in the case here on  
6 trial.

7 So, Mrs. Satin, if you will just step out, get  
8 your belongings and return to your seat, I would appreciate  
9 it.

10 I will see counsel at the side bar.

11 (At the side bar.)

12 THE COURT: I will ask first if there are any ex-  
13 ceptions, and then I will ask if there are any supplementary  
14 requests.

15 I will turn first to you, Mr. Mukasey.

16 MR. MUKASEY: Your Honor, only in the nature of  
17 requests, I have two. First, that your Honor indicated in  
18 discussing the conspiracy count, that a defendant quite  
19 properly cannot be found guilty of conspiring with the  
20 Government.

21 On the other hand, I would ask that your Honor  
22 tell the jury that David Stolzenberg is a co-conspirator,  
23 and there are others, but I think he is the only relevant  
24 one who appears on the tapes who is not accounted for in the  
25 indictment.

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T-2

EXCEPTIONS TO CHARGE JA 165

1-jwesb

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(In open court, jury not present.)

THE COURT: Would any of you have any objection to my excusing Miss Satin at this time?

MR. ARKIN: I can't see why not, your Honor.

THE COURT: Very well.

MR. LEVISON: I have none.

THE COURT: There being no objection, Mrs. Satin, we have some more legal business to perform. I am going to take this opportunity on my own behalf and on behalf of all counsel to thank you very much for your service on this jury.

As I said, you stand and sit in a frustrating position of not having actually been able to deliberate on the case, but as you saw from the fact that one of our jurors left us, alternate jurors are very important.

Had there been one other juror who would not have appeared today or been ill, you would have been in there today deliberating with the rest of them.

So on my own behalf and on behalf of the Court, I want to thank you very much for your time and for your effort on our behalf.

MR. ARKIN: I have to keep my voice down, your Honor.

THE COURT: Yes.



1 2-jwesh  
2 MR. ARKIN: If your Honor please, with respect  
3 to your Honor's instruction on the first count, the  
4 conspiracy count, I realize that it was a very difficult  
5 problem to handle that count.

6 I had many objections before the charge to the  
7 count being submitted on the ground we would never really  
8 know how the jury would decide it. So your Honor gave the  
9 Kotteakos charge, but you gave it in conjunction, if your  
10 Honor please, with a charge to the effect that "if you find  
11 only one purpose of the indictment was agreed to by any two  
12 conspirators" that they might find those two conspirators  
13 guilty of the first count.

14 I suggest, your Honor, that the problem which is  
15 raised by that charge -- you can give it in conjunction  
16 with the Kotteakos charge -- I will use a word often used  
17 in this case, it is an analog of the Stromberg and  
18 California problem, which I am sure your Honor is familiar  
19 with.

20 In other words, where you have a case submitted  
21 to the jury on one of several theories -- at least in the  
22 Stromberg case -- one of which is impermissible and one of  
23 which is not, and the jury returns a verdict without  
24 specifying which of the theories they made the determination  
25 upon, why, the verdict itself lacks the proper integrity

1 3-jwesh

2 in order to be sustained.

3 Here it is not quite the same as Stromberg, but  
4 it is an analog in that we have here the problem of several  
5 different defendants and known present alleged co-conspira-  
6 tors and unindicted co-conspirators and we have several  
7 theories within the context of this case.

8 We have the cocaine theory, the TPT theory, the  
9 hash theory, we have the seconal and tuinal theory and we  
10 would not know from the jury's verdict what it was.

11 That raises a problem that perhaps cannot be  
12 overcome, but to the extent I would say your Honor's charge,  
13 the case itself, the very count itself raises that problem,  
14 I must except to it.

15 Now, I have a few other things.

16 When your Honor charged in respect to overt acts,  
17 I would suggest that your Honor instruct the jury that an  
18 act by an agent is not an overt act.

19 Some of the overt acts charged could have been  
20 on the facts as presented in this case, having to do with  
21 Brian or Ricky or Haralambus, I believe his name was, and I  
22 would suggest that minor instructions be given.

23 With respect to overt acts, as I understand the  
24 law, an overt act, to be an overt act within the conspiracy,  
25 must be one following along the same lines as before,



1 4-jwesb  
2 committed by an alleged co-conspirator in furtherance of  
3 the particular conspiracy charge.

4 And I believe your Honor, while charging on  
5 over acts, may not have stated that the overt act must be  
6 committed by -- to be a part of the conspiracy -- must be  
7 committed by a co-conspirator who has been found to have  
8 joined in the agreement, the criminal agreement.

9 Now, I have one very substantial exception at  
10 this point, which is that in the course of your Honor's  
11 charge, your Honor lumped together Mr. Steinberg with Mr.  
12 Kaye insofar as the insanity defense.

13 Now, Mr. Steinberg has never asserted an  
14 insanity defense, either by way of formal application or  
15 during my summation.

16 During my summation, I said that my client was  
17 not insane. I said that he behaved in an ill fashion  
18 because of the drugs, as a consequence of the drugs upon  
19 him.

20 My argument, my defense, if your Honor please,  
21 was that Steinberg, affected by the drug as he was, the  
22 drugs having a suggestible effect, that is to say, the  
23 drugs having an effect making him more easily controlled  
24 by people, he was more easily controlled by the agents who  
25 visited upon him their suggestion that he engage in

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particular activities.

I am afraid that the jury hearing your Honor's instructions and lumping Mr. Steinberg with Mr. Kaye and Mr. Kaye to psychiatrists, whom we didn't call, whom we didn't examine -- I didn't even cross-examine them, I didn't even blink an eye at them -- I think puts the thrust of our defense off center, possibly, in the jury's mind.

The jury might think the issue with respect to Mr. Steinberg is his appreciation of right or wrong, when as a matter of fact, our defense was nothing like that. Our defense was the conduct he engaged in was suggested to him at the time when he was suggestible and under the influence of the drugs at that time.

In fact, the defense goes to the requisite specific intent. I think, your Honor, I discussed that at the bench the other day. And it is not an insanity defense. And I think the charge lumped together with Mr. Kaye may have put our defense --

THE COURT: In other words, you are complaining that I have given you actually an additional defense because I did include your charge, requests on the matter of the drugs affecting his intent.

MR. ARKIN: Well, no. I am concerned, really, your Honor, that by lumping our defense together with a



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1  
2 straight insanity defense, that is, the Durham rule and  
3 Martin rule which I believe your Honor charged --

4 THE COURT: I never used the word "insanity."  
5 I think you know that. And I never used the words "sane"  
6 or "insane" to my recollection; and that was consciously  
7 done.

8 MR. ARKIN: That is a Durham term, your Honor.

9 THE COURT: Yes, it is a Durham term.

10 MR. ARKIN: And the difficulty, as I see it, is  
11 that it detracts from or emasculates the defense we put  
12 forward which would be the intent defense.

13 We did submit charges along Archer which were  
14 rejected; and I understand that. But the point is we had  
15 an intent defense and we never put a treating psychiatrist  
16 on.

17 And by having us compared together with Kaye  
18 where we didn't have a psychiatrist, it makes the defense we  
19 had as to Dr. Solomon, Snyder and the evidence that this  
20 man was ingesting drugs, it reduces it, as we say, takes it  
21 out of focus.

22 So I would ask your Honor to explain by way of a  
23 supplementary instruction that the defendant Steinberg does  
24 not claim he was mentally diseased, but rather that he was  
25 in a drug intoxicated state, as your Honor did on

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2 Charge 14-A.

3 THE COURT: I gave 14-A.

4 MR. ARKIN: Yes, you did, your Honor.

5 THE COURT: So what I am saying is I have given  
6 you an extra defense.

7 If you would like me to take back from the jury  
8 anything I said lumping Mr. Steinberg with Mr. Kave on  
9 mental disease or defect resulting from the use of drugs,  
10 which is the way I put it, I will do so.

11 MR. ARKIN: I would ask that your Honor  
12 distinguish us from Mr. Kaye absolutely and instruct --

13 THE COURT: No, if you want me to withdraw your  
14 defense in that regard, I will do so.

15 If I heard you correctly, I think I correctly  
16 stated to the jury your argument. At the very worst, I  
17 have given you an additional defense which I think can  
18 fairly be inferred from your presentation.

19 MR. ARKIN: Well, if your Honor --

20 THE COURT: I don't think that you do want me to  
21 withdraw that in those words, do you, say that the  
22 defendant Steinberg withdraws any defense that by virtue  
23 of mental disease or defect resulting from the use of drugs,  
24 he was not responsible for his conduct?

25 Now, do you want me to do that?



MR. ARKIN: Not in those words.

THE COURT: Then I won't change my charge in that respect.

Next.

MR. ARKIN: Right.

Your Honor, there were two points in your charge, one time when you defined Agents Noone, Anderson and Ricky as Government agents and informants, respectively, and then at a later point in the charge when you were speaking of the entrapment defense, or the enticement defense, you only referred to Agent Noone.

And that was a later point in the charge, particularly when it was important because you were getting into the Pignatola charge there, the entrapment or enticement charge.

I would ask your Honor to --

THE COURT: No, in the entrapment charge, I referred to Mr. Citrola, as well.

I will read you the beginning of it and I think you will have the thrust of it:

"The defendant Steinberg also contends that the transactions in this case were induced by Government employees. In short, he advances a defense which the law terms entrapment" -- and I think I added something

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2 about "or enticement."

3 But I went on with this language:

4 "Under this defense, if you find that no crime  
5 would have occurred but for the conduct of Agents Noone  
6 and Anderson or Ricky Citrola, you must acquit Steinberg  
7 of all charges."

8 MR. ARKIN: If I am mistaken, I apologize, your  
9 Honor.

10 THE COURT: Then you are withdrawing that one?

11 MR. ARKIN: Your Honor has proven to me my notes  
12 are incorrect.

13 THE COURT: That is what I had down here and I  
14 do hope I read it as I wrote it.

15 MR. ARKIN: Then I withdraw that request.

16 THE COURT: Anything else?

17 MR. ARKIN: One other request and that is that  
18 your Honor did not charge, as I recollect, that the jury  
19 may agree or disagree with respect to any one defendant or  
20 any one count. And I believe you gave the alternatives of  
21 guilt or innocence, but not as your Honor did the other  
22 day, that is, yesterday, the alternative of disagreement.

23 THE COURT: Well, I said so many times they have  
24 to consider each defendant on each count and I did indicate  
25 yesterday during the course of Mr. Mukasey's summation they



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2 could disagree.

3 I think it would be inappropriate at this point  
4 to suggest that they should disagree. If they do disagree,  
5 I know they will. They have heard enough to know that they  
6 are to consider this case carefully.

7 I would suggest that I should not supplement my  
8 charge by indicating to the jury that they can disagree.  
9 Therefore, I will decline to supplement my charge in that  
10 regard.

11 Is there anything else?

12 MR. ARKIN: Well, I will sit down now.

13 THE COURT: Mr. Levison?

14 MR. LEVISON: Your Honor knows the proposition  
15 that I cited as a matter of law on the question of the  
16 indictment coupling this defendant with a deceased  
17 defendant and how to handle that situation, if the jury  
18 should call for a copy of the indictment.

19 Even though Mr. Durst's name should not be in  
20 there, how do you handle a situation in the protection of  
21 this defendant where it is alleged that these -- and not  
22 only that the tapes were played to the effect that Durst  
23 had spoken, and I have no way of protecting his interests,  
24 the right to that particular type of allegation in the  
25 indictment, or as to any overt act that was committed

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1 THE COURT: Is there anything else, Mr.  
2 Levison?

3 MR. LEVISON: No, thank you, Judge.

4 THE COURT: Mr. Ellis?

5 MR. ELLIS: Thank you, your Honor.

6 Your Honor, first I respectfully except to the  
7 failure of the Court to grant my request 4 and 11.

8 THE COURT: What were 4 and 11? I really gave  
9 you most everything you asked for, I think.

10 MR. ELLIS: Yes, you did, your Honor. I forget  
11 the order, but one of my requests, I believe, was that the  
12 Government as a litigant in this courtroom should not be  
13 considered to have any greater or lesser standing than any  
14 other party.

15 THE COURT: 4 was, "Even close and repeated  
16 association with those proved to have committed the criminal  
17 offense which was the objective of the conspiracy does not,  
18 standing alone, establish that the person was a  
19 conspirator."

20 I think I gave that instruction, although I for  
21 the record denied your request.

22 Your 11 was, "The Government here must be  
23 considered in no different light than any other party to a  
24 lawsuit and counsel for the Government must be considered  
25



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2 in no different light than counsel for the defendant or  
3 any other litigant. The fact that the Government is a  
4 party entitles it to no greater or lesser consideration  
5 than accorded to any other party in a lawsuit."

6 I would suggest that the charge is full,  
7 complete and adequate without that specific language in it.  
8 My recollection is that I did cover this matter in the  
9 voir dire and in the initial inquiry of the jurors when  
10 asked them to treat the parties the same. As you recall,  
11 I did do that.

12 I suggest the charge as presently constituted  
13 is sufficient. I covered the matter -- I think you asked  
14 for it; maybe others did -- of the weight or lack of  
15 weight to be given witnesses' testimony because they were  
16 Government agents.

17 MR. ELLIS: Yes, sir.

18 THE COURT: All right. You except to my  
19 refusal to charge your requests 4 and 11.

20 Anything else?

21 MR. ELLIS: Yes, your Honor. I have one or two  
22 supplemental requests.

23 Perhaps this is a question of emphasis rather  
24 than substance, but in defining for the jury the elements  
25 of the conspiracy, I thought I heard your Honor say that

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2 each defendant must knowingly associate himself with the  
3 venture, and that suggested to my mind that the jury might  
4 conclude that association alone would be sufficient.

5 Although you cover that point down the road in  
6 your charge, your Honor, I think in laying out the elements  
7 and referring to association alone, we might have confused  
8 the point inadvertently.

9 THE COURT: I reviewed this more than once  
10 before I gave it and I think that taken as a whole, in  
11 totality, the charge on that subject is correct and fair.

12 So I will not supplement my charge in that  
13 regard.

14 Anything else, Mr. Ellis?

15 MR. ELLIS: Yes, your Honor, on the issue of  
16 willfulness, your Honor charged that the jury may consider  
17 the particular defendants' use of drugs at the time, I  
18 believe, or the extent to which they may well have been  
19 overcome by the use of drugs at the time.

20 THE COURT: Yes.

21 MR. ELLIS: I would respectfully request that  
22 you also charge them that they consider on the issue of  
23 willfulness, the defendants' mental health, the presence of  
24 a mental defect or disease at the time.

25 THE COURT: That is in the charge. I adapted



1  
2 Mr. Arkin's 14-A from Steinberg to a defendant with your  
3 client in mind.

4 My notes indicate, "In determining whether a  
5 defendant acted knowingly and intentionally, it is  
6 relevant for you to consider his mental and physical  
7 condition during the period of time he is alleged to have  
8 committed the acts charged."

9 MR. ELLIS: In view of that, your Honor, I  
10 withdraw it.

11 THE COURT: Very well. I think it was covered.  
12 Anything else?

13 MR. ELLIS: One final point. On the issue of  
14 the false statement --

15 THE COURT: False exculpatory statement.

16 MR. ELLIS: Yes, your Honor. I don't think that  
17 the instruction was sufficiently clear, most respectfully,  
18 in that the jury must find, (a), the statement was in fact  
19 false and, (b), that the defendant knowing it to be false  
20 intentionally uttered the falsehood.

21 I thought it was a little bit vague on the  
22 first element.

23 THE COURT: I think it fairly states the law  
24 and I will decline to supplement my charge.

25 MR. ELLIS: I respectfully except.

THE COURT: Anything else?

MR. ELLIS: No, your Honor.

THE COURT: Mr. Siegel?

MR. SIEGEL: Your Honor, I will save time. I will join Mr. Arkin's objection to the first count.

THE COURT: Anything else?

MR. SIEGEL: No, your Honor.

THE COURT: Thank you.

I suggest at this point we bring in the jury and I will give them the form at this point. I held it until we were finished.

Miss Kruger, would you bring in the jury? And then I will instruct them to proceed to deliberate.

(Jury present.)

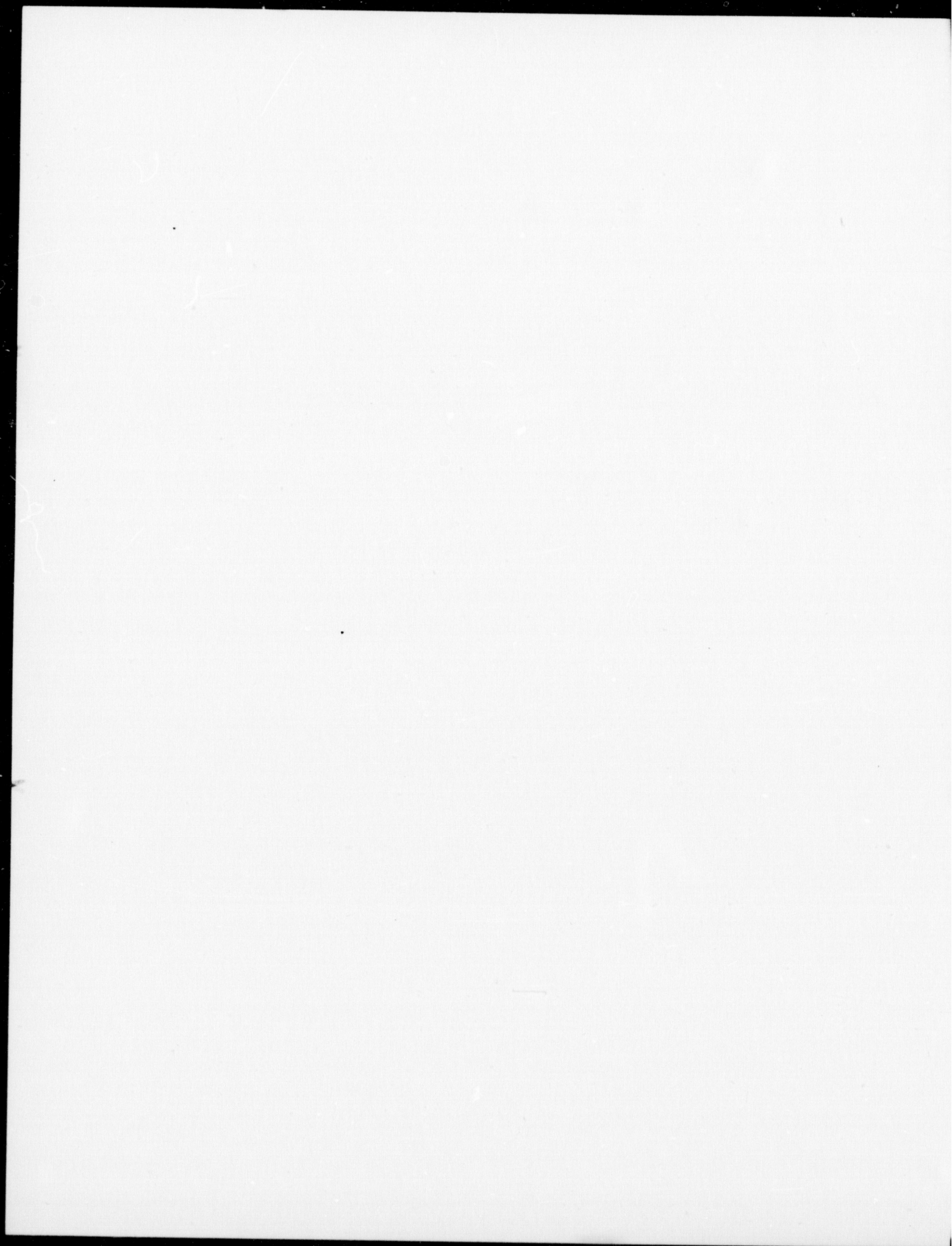
THE COURT: Miss Kruger, would you hand our foreman, Mr. Gutierrez, the verdict form? And would you place the marshal under oath to attend the jury?

(Deputy marshal was duly sworn.)

THE COURT: Now let the record reflect that Miss Kruger is handing the verdict form to Mr. Gutierrez, our foreman, and let the record further reflect that counsel have received copies of the form.

Ladies and gentlemen, I instruct you at this time to proceed to the jury room to commence your deliberation.





Service of <sup>1 copy</sup> ~~2~~ copies of the  
within Appendix is hereby  
admitted this 19th day of  
May 1975  
Signed \_\_\_\_\_

Attorney for Appellee

